

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1176

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

B
P/S

UNITED STATES OF AMERICA,

Appellee,

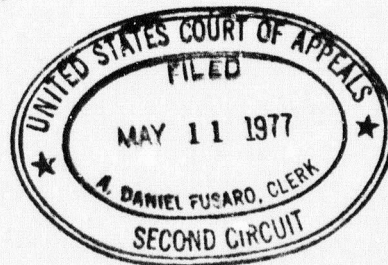
- against -

DAVID WALKER,

Appellant.

APPELLANT'S APPENDIX

SAXE, BACON & BOLAN, P.C.
Attorneys for Appellant
39 East 68th Street
New York, New York 10021
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PAGINATION AS IN ORIGINAL COPY

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JUDGE/MAGISTRATE Assigned
0715
207 1
District Office

U.S. vs.

76CR 547

DAVID WALKER DOCKET ENTRIES
(LAST FIRST MIDDLE)

Case Filed
8/25

WEINSTEIN, J. LA

76 547 1

U.S. TITLE SECTION 18:1709,371 & 2 OFFENSES CHARGED
Did conspire to embezzle
12 parcels of mail from the
Registry Section of the Airport Mail
facility, JFK Internal Airport,
the Deft being employed by the U.S.
Postal Service.

CLOSED

U.S. MAG. CASE NO. 76 M 986

AMT. ☐ Fugitive
Detained ☐ ☐ Pers. Recog.
50 ☐ IPSA
Date ☐ conditions
☐ 10% Deposit
☒ Surety Bond / 100
☐ Bail Not Made ☐ Collateral
☒ Status Changed ☐ 1st ☐ 2nd ☐ Other

KEY DATES & INTERVALS

ARREST	INDICTMENT	ARRAIGNMENT	TRIAL	SENTENCE
U.S. Custody Begin 5/22/76	High Risk Date 8/25/76	Information 9/3/76	1/3/77	1/3/77
Summons Served	Indict. Waived	Arrested		
First Appearance	In Charging District			

SEARCH WARRANT	DATE	INITIAL/NO	MAGISTRATE	INITIAL APPEARANCE DATE	INITIAL NO	OUTCOME
Search Warrant Issued	5-22-76	ASC/070B		6-3-76		
Summons Issued	5-22-76	ASE/070B				
Arrest Warrant Issued						
COMPLAINT						
OFFENSE (In Complaint)	Theft of Mail. T-18 USC Section 1709. See 76 M 986 for Search Warrant.					

U.S. Attorney or Asst.

G.Scotti

ATTORNEYS

Rafael Batine, Esq.
200-17 Linden Blvd.,
St. Albans, NY

Michael Rosen, Esq.
39 East 68th St.,
New York, NY ;0021
472-1400

* Show last names and suffix numbers of other defendants or same name defendant information

HELEN A. HELTON 2; ROSARIO R. MARCHIONE 3

DATE	(DOCUMENT NO)	PROCEEDINGS	EXCLUDABLE DELAY
5-25-76		Before Magistrate A.Simon Chrein - Nebbia Hearing held For Govt. Scotti, D.C Leroy Kellam, Esq. Witness David Walker, Mrs. Walker and nephew, Mr. Walker and Mr. Derrico, (bailbondsmen). Proceeding recorded. Ruling made. Deft. bailed.	
6-2-76		Michael Rosen, Esq. telephonically waived hearing - Letter to follow - he notified - ASM and Rafael Batine.	
6-2-76		Dated - See letter waiving hearing.	
8/25/76		Before PRATT, J. - Indictment filed	
9/3/76		Notice of Appearance filed.	
9/3/76		Befor PRATT, J. - Case called. Deft present. Deft arraigned and enters a plea of not guilty. Bail limited to N.Y. & N.J. Adjd without date before Judge Weinstein.	
11-8-76		Before Weinstein, J.- Case Called. Deft. & Counsel present. Pre-Trial Conference held and concluded. Deft. waives the Speedy Trial rule. Trial set for 1-3-77 at 10:00 A.M. Govt's motion to unseal orders previously ordered sealed by Weinstein, and the Magistrate is granted.	

BEST COPY AVAILABLE

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW IN SECTION V ANY OCCURRENCE OF EXCLUDABLE DELAY PER 16 USC § 3055(b)

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
			Excludable Delay (a)	Excludable Delay (b)	Excludable Delay (c)	Excludable Delay (d)
11-8-76	By WEINSTEIN J - Order filed that the following listed documents are ordered unsealed: 1. Order and affidavit dated Mar. 30, 1976 for the installation and monitoring of a beacon transmitter. 2. Order and affidavit dated May 20, 1976 extending the Mar. 30 order. 3. Affidavit for a Search Warrant dated June 14, 1976.					
11-9-76	Above referred to Orders removed from the Vault and placed in the criminal folder.					
11-11-76	Copy of Letter filed from AUSA to Roy Kulcsar confirming the extent of discovery provided during meeting on 10-12-76 and to provide additional information which was subsequently requested.					
11-11-76	Notice of Readiness for Trial - filed.					
11/26/76	Letter filed dated 11/24/76 to counsel for deft, Mr. Kulcsar from AUSA - Scotti, re: telephone conversation requesting discovery material.					
1-3-77	Before Weinstein, J.- Case Called. Deft & Counsel present. Deft's. motion to suppress tapes is granted. Deft's. motion to suppress conversation with Tony Short is denied. None of the Deft's. assets to be spent during this trial. Trial ordered and begun. Jurors were selected and sworn. Trial continued to 1-4-77 at 9:30 A.M.					
1-4-77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 1-5-77 at 9:30 A.M.					
1-5-77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Deft. rests. Deft's motion to dismiss the indictment is denied. Govt. sums up. Deft. sums up. Govt. sums up in rebuttal. Trial continued to 1-6-77 at 9:30 A.M.					
1-6-77	Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial resumed. Court charges jury. Jurors retire for deliberation. Order of Sustenance signed. (Lunch & Sandwiches) Order of Sustenance signed (Coffee) Jury sent home at 6:40 P.M. Trial continued to 1-7-77 at 9:30 A.M.					
1-7-77	By Weinstein, J. Order of Sustenance filed. (LUNCH) By Weinstein, J.- order of Sustenance filed. (COFFEE)					
1-7-77	Before WEINSTEIN, J. - Case called. Deft & counsel present. Trial resumed. Jury resumes deliberations. Deft's motion for a mistrial. Hearing ordered & begun. Hearing concluded. Deft's motion for a mistrial is denied. Order of sustenance signed. Jury returns and renders a verdict of guilty as to each of counts 1 and 2. Jury polled & discharged. Deft's motion to set aside the verdict is denied. Sentence adj'd without date.					
1-7-77	Scenographer's transcripts dtd Jan. 3, 4 & 5, 1977 filed.					

CD NUMBER

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
1-11-77	By Weinstein, J.- Order of Sustenance filed.				
1-12-77	Letter filed written by Michael Rosen to Judge Weinstein asking for an order directing the clerk to release the full names and address of each of the jurors to him.				
1-12-77	By Weinstein, J.- Order filed that the motion for an order directing the clerk to release the full names and address of each of the jurors to him will be heard on 1-21-77 at 9:30 A.M. Parties notified as directed.				
1-20-77	Letter filed dated 1-19-77 received from Chambers from Gavin Scotti, Asst. US Atty.				
1-21-77	Before Weinstein J - case called - deft & atty M. Rosen present - defts motion for names and addresses of trial jurors argued and granted - So Ordered - Clerk of the Court is directed to turn over the names and addresses of trial jurors to Mr. Rosen, counsel for the deft.				
2.7.77	Stenographer's Transcript dated January 7, 1977 filed.				
2.7.77	Stenographer's Transcript dated January 6, 1977 filed.				
3.3.77	Notice of Motion for an order setting aside the verdict of guilty etc. filed and forwarded to Chambers. (returnable 3.11.77 at 9:30 A.M.)				
3.3.77	Defendant's Memorandum filed and forwarded to Chambers.				
3-9-77	Stenographers transcript filed dated Jan. 21, 1977				
3-11-77	Before Weinstein, J - case called - deft & atty M. Rosen present - defts motion for a new trial and to set aside the verdict is denied. Findings read into record - deft sentenced to 3 years imprisonment on each of cts 1 and 2 to run concurrently - and fined \$2000 on count 1 and fined \$10,000 on count 2 for a total fine of \$12,000 to run consecutively and to be paid within 30 days. Stay of execution of sentence granted pending appeal.				
3-11-77	Judgment & commitment filed - certified copies to Marshal.				
3-11-77	Various communications filed received from Chambers (re deft's character etc)				
3/18/77	Notice of appeal filed.				
3/18/77	Docket entries and duplicate of Notice of Appeal mailed to the C of A.				
3/28/77	copy of governments request to charge filed.				
3-28-77	Record on appeal certified and mailed to the court of appeals				
4-7-77	Scheduling order filed that record be docketed on or before 4-7-77				
4-8-77	Acknowledgment received from the court of appeals for receipt of record on appeal filed.				
4/15/77	Letter of Michael Rosen to Weinstein, J dtd 4/5/77 • filed re requesting extension of time to pay file. So ordered, Weinstein, J. JLJ				

DEFENDANT

JUDGMENT AND COMMITMENT

DAVID VALER

DOCKET NO. 76CR-547

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
 the defendant appeared in person on this date

MONTH	DAY	YEAR
3	11	1977

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Michael Rosen

(Name of counsel)

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being ~~OTHER~~ verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of violating Title 18 U.S.C. §§ 371, 1709 and 2, in that from on or about and between Sept. 1, 1975 and May 31, 1975, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant and others did knowingly conspire to embezzle a registered mail bag which had been entrusted to them as Postal Service employees, and that on or about Sept. 22, 1975, the defendant and others did knowingly and willfully embezzle twelve parcels of mail.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

3 years on each of counts 1 and 2 to run concurrent - and fined \$2,000 on count 1 and fined \$10,000 on count 2 to run consecutive for a total fine of \$12,000 to be paid within 30 days. Stay of execution of sentence granted pending appeal.

FINDING & JUDGMENT

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

FILED
 IN CLERK'S OFFICE
 U. S. DISTRICT COURT E.D. N.Y.

★ MAR 11 1977 ★

TIME A.M.
 P.M.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

It is further ordered that the defendant be committed to the custody of the Attorney General and recommended,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☐ U.S. Magistrate*John B. Weinstein*

Date

3/11/77

(38)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

DAVID WALKER,
HELEN A. HELTON and
ROSARIO R. MARCHIONE,

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about September 22, 1975, at the Registry Section, Building 179 of the Airport Mail Facility, John F. Kennedy International Airport, within the Eastern District of New York, the defendant DAVID WALKER, while employed as a Foreman of Mails, United States Postal Service, the defendant HELEN A. HELTON, while employed as a Clerk, United States Postal Service and the defendant ROSARIO R. MARCHIONE, while employed as a Transfer Clerk, United States Postal Service, did knowingly and wilfully embezzle twelve (12) parcels of mail which came into their possession intended to be conveyed by mail, ten (10) of said parcels addressed to the Irving Trust Company, New York, New York and two (2) of said parcels addressed to the Chase Manhattan Bank, New York, New York, which parcels contained approximately Eight Hundred Thousand Dollars (\$800,000.00) in United States Currency.
(Title 18, United States Code, Sections 1709 and 2).

W. J. Weinstein

INDICTMENT

Cr.No. 76 CR 547
(T. 18, U.S.C., §§1709, 371
and 2)

8/25/76

COUNT TWO

From on or about and between September 1, 1975 to May 31, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants DAVID WALKER, HELEN A. HELTON and ROSARIO R. MARCHIONE did knowingly, wilfully and unlawfully conspire and agree to commit an offense against the United States in violation of Title 18, United States Code, Section 1709 by conspiring to embezzle, steal, abstract and remove a registered mail bag containing twelve parcels of mail from the Registry Section, Building 179 of the Airport Mail Facility, John F. Kennedy International Airport, which had been entrusted to them as Postal Service employees and had come into their possession intended to be conveyed by mail.

In furtherance of said unlawful conspiracy and to further the objects thereof, the defendants DAVID WALKER, HELEN A. HELTON and ROSARIO R. MARCHIONE did commit the following:

1. On or about September 22, 1975, at the Registry Section, Building 179 of the Airport Mail Facility, John F. Kennedy International Airport, the defendant HELEN A. HELTON prepared a bag of registered mail containing twelve parcels.

2. On or about September 22, 1975, at Building 179 of the Airport Mail Facility, John F. Kennedy International Airport, the defendants DAVID WALKER and ROSARIO R. MARCHIONE took the bag of mail described in paragraph 1 above and placed it in a mail truck with empty mail sacks.

3. On or about September 22, 1975, within the Eastern District of New York, the defendant DAVID WALKER gave approximately Two Hundred Thousand Dollars (\$200,000.00) to the defendant HELEN A. HELTON.

4. On or about September 22, 1975, within the Eastern District of New York, the defendant DAVID WALKER gave approximately Thirty Thousand Dollars (\$30,000.00) to the defendant ROSARIO R. MARCHIONE.

5. On or about May 17, 1976, the defendants DAVID WALKER and HELEN A. HELTON drove from Queens, New York to Granville, New York. (Title 18, United States Code, Section 371).

*deemed
corrected
1/3/77*

A TRUE BILL

David G. Trager by TTP
DAVID A. TRAGER
United States Attorney
Eastern District of New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket Number 76 Cr. 547

-against-

DAVID WALKER,

Jack E. Weinstein

(District Court Judge)

Defendant

NOTICE OF APPEAL

Notice is hereby given that the defendant, David Walker, appeals to
the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other
(specify) of conviction entered in this action on March 11, 1977
(Date)

Date March 17, 1977

Address

SAKE, BACON & BOLAN, P.C.
(Counsel for Appellant)
39 East 68th Street
New York, New York 10021

To: HON. DAVID G. TRAGER

United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Phone Number (212) 472-1400

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

▶ QUESTIONNAIRE

▶ TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

I am ordering a transcript except as indicated
I am not ordering a transcript

Reason:

- ☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

Prepare transcript of

- ☐ Pre-trial proceedings
☐ Trial March 11, 1977
☐ Sentence
☐ Post-trial proceedings

ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of transcript. (FRAP 10(b)) ▶ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

MARCH 17, 1977

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

COPY FOR DEFENDANT

1 E D M U N D H. M U L L I N S, called as a witness having
4 2 been first duly sworn by the Clerk of the Court, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. SCOTTI:

6 Q Mr. Mullins, you are a postal inspector employed
7 by the U.S. Postal Service, are you not, sir?

8 A Yes, sir.

9 Q Do you have any particular duty station?

10 A I am stationed at the airport mail facility at
11 Kennedy Airport.

12 Q Do you specialize in any particular kind of
13 postal investigation?

14 A I am an internal theft specialist.

15 Q Please explain what internal theft specialist
16 means?

17 A I investigate crimes alleged to have been
18 committed withing the post office.

19 Q Now, you are the case agent on this case before
20 this jury on trial, is that right?

21 A Yes.

22 Q Will you explain to us what a case agent is?

23 A A case agent is the postal inspector to whom the
24 investigation is assigned, the person responsible for coordi-
25 nating the entire investigation.

Mullins-direct

5 2 Q Did there come a time, Inspector Mullins, when
3 you met Anthony Shortt or Tony Shortt?

4 A Yes.

5 Q When was that, sir?

6 A I met Anthony Shortt on September 7, 1975.

7 THE COURT: I would like counsel to come to the
8 side bar. I don't know where this is going.

9 (Side bar discussion out of hearing of the jury
10 as follows)

11 THE COURT: What do you expect to prove?

12 MR. SCOTTI: After he met Shortt, what action
13 he took to explain the surveillance, to explain,
14 Mr. Rosen is mentioning cameras, surveillance camera
15 that nobody was surveilling --

16 THE COURT: No.

17 MR. SCOTTI: I can't bring out the fact that
18 the cameras were not working on September 22?

19 THE COURT: No.

20 MR. SCOTTI: Will he be precluded in making
21 that argument on summation?

22 MR. ROSEN: I will ask him if he saw someone.

23 THE COURT: You can ask him if the cameras were
24 in operation. What else?

25 MR. SCOTTI: Let me get my notes. When they

Mullins-direct

received notificaiton of the losss of these parcels.

THE COURT: No. What else?

MR. SCOTTI: It is not hearsay, it is a document kept in the normal course of business.

THE COURT: It is not relevant.

MR. SCOTTI: It is. He will argue in summation they watched him all during this period of time. We didn't know there was a loss until January.

THE COURT: Are you going to argue that?

MR. ROSEN: I will argue that he was under surveillance in September.

THE COURT: You can introduce that. What else?

MR. SCOTTI: As to the fact why there was no surveillance on September 22, 1975, the day in question.

THE COURT: Why?

MR. SCOTTI: There was no surveillance because Walker was the supervisor and was only shifted over to the department because the supervisor was sick and number two, Tony Shortt was not working at that time.

THE COURT: All right. Make it brief.

MR. SCOTTI: I couldn't ask him about the surveillance?

THE COURT: Yes.

MR. SCOTTI: Just by way of explanation?

Mullins-direct

7 2 THE COURT: Yes, just what I said.

3 (In hearing of the jury as follows)

4 BY MR. SCOTTI (Cont'd):

5 Q Inspector Mullins, with regard to the loss of
6 the 12 parcels of mail that has been discussed during this
7 trial, when did the postal service receive notification that
8 any of these parcels were missing?

9 A The case was jacketed for investigation on
10 January 8, 1976.

11 Q When -- does that indicate that the postal
12 inspectors service was notified on that date?

13 A It may have been notified a day earlier, but
14 that was the date the case was jacketed. We received our
15 notifications of losses from the Claims and Inquiry Section,
16 then we jacketed a case.

17 Q Now, were there cameras in operation, surveillance
18 cameras in operation with the registry section on September 22,
19 1975?

20 A There were no cameras in operation at that time.
21 The cameras were placed, but they were not in operation.

22 Q Were they in working order?

23 A They were in working order. They required to be
24 manually operated.

25 MR. ROSEN: They were or were not?

Mullins-direct

1
2 A They were in working order. They required to
7a 3 be operated manually, but nobody was there operating them.

4 Q Did these cameras have video taping capability?

5 A No.

6 (Continued next page)
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S/s3

Mullins-direct

361

pm

BY MR. SCOTTI:

Q So they could not be set on automatic?

A They have no automatic capabilities.

Q Was any kind of surveillance being conducted of the registry section or Mr. Walker on September 2, 1975?

A No, there was not.

Q Was there a reason for that, sir?

A The reason was that I was short of manpower and I was only conducting surveillances on the date Mr. Short and Mr. Walker were both working at that time.

Q Was Mr. Short working on September 2nd?

A No, he was not.

Q By the way, was Mr. Walker -- where was Mr. Walker supposed to be working on September 2, 1975?

A The duty schedule called for him to be the foreman of the foreign dispatch area.

Q Which would be outside the registry section?

A That's right.

Q How did it come to be he was working as foreman for the registry section?

A The regular foreman of the registry section received annual leave for that day.

MR. SCOTTI: Thank you, I have no further question.

Mullins-cross/Rosen

CROSS-EXAMINATION

BY MR. ROSEN:

Q Mr. Mullins, you're the agent in charge of this investigation, right?

A Yes.

Q All steps taken with Mr. Scotti and pursuant to this investigation have been done through you, is that correct?

A No, not all steps. It was a two-week period of time when I was not on the case.

Q You were on vacation?

A I was in the hospital

Q You're stationed at Kennedy Airport, this building 159 that should be familiar to you --

MR. SCOTTI: 179.

Q Building 179.

A It's familiar to me.

Q You were sitting here during Mr. Marchione's testimony about the fence, am I right, that's in the yard. You see this fence (indicating)?

A Yes.

Q How tall was that fence?

A The fence, I believe, is six feet tall, topped with three strands of barbed wire, I believe.

Mullins-cross

3 1

2 Q How high is that barbed wire; do you have any
3 idea, sir?

4 A It's taller than the fence.

5 Q Excuse me, sir?

6 A IT's taller than the fence.

7 Q The barbed wire is taller than the fence?

8 A The barbed wire is on top of the fence.

9 Q So what are we talking about, 12 feet up in the
10 air?

11 A I'm talking about approximately 8 feet high.

12 MR. ROSEN: Would you mark this, sir?

13 THE CLERK: Photo marked as Defendant Exhibit H
14 for identification.

15 (So marked.)

16 THE CLERK: Photo marked as Defendant Exhibit I
17 for identification.

18 (So marked.)

19 THE CLERK: Photo marked as Defendant Exhibit J
20 for identification.

21 (So marked.)

22 MR. SCOTTI: Your Honor, I have absolutely no
23 objection to these questions, but at this point the
24 witness is Mr. Rosen's witness. I would respectfully
25 request to cross-examine when he's through.

Mullins-cross

MR. ROSEN: Might I be heard, your Honor?

THE COURT: You'll be permitted.

MR. SCOTT: Thank you.

MR. ROSEN: Either way.

BY MR. ROSEN:

Q Inspector, I show you what has been marked Defendant's Exhibit J for identification (handing witness), Can you tell us what that picture depicts?

A The picture depicts the fence which you pointed out to me in blue before on the diagram, a portion of that fence.

Q That's the fence at the airport that you're familiar with?

A That's a portion of it, yes.

Q Is that a portion -- would you say it's a portion of the fence that's represented by this diagram right here where the witness drew the truck and put the word "truck" on the diagram?

A I can't tell from the picture whether it's the same spot or not.

Q How about Exhibit I (handing) for identification, sir?

A Exhibit I is the portion of that fence, again, drawn on the diagram looking towards the old supervisors'

5
1
2 parking area into the corner of it, the upper right-hand
3 corner.

4 Q Is the fence visible in these two pictures?

5 A Yes, it's visible.

6 MR. ROSEN: I would like to move them into
7 evidence. I'll show them to Mr. Scotti.

8 I would represent the pictures were taken just
9 a couple of weeks ago. They're not back in '75.

10 MR. SCOTTI: I have no objection.

11 THE CLERK: Defendant's Exhibits J and I for
12 identification, marked in evidence.

13 (So marked.)

14 Q Inspector, I show you what has been marked
15 Defendant's Exhibit H in evidence (handing). Is that a
16 closer picture of the fence that surrounds the parameter of
17 the airport or -- the parameter, yes.

18 THE COURT: Perimeter.

19 Q I'll represent to you that was taken at the
20 airport. I want to know if that's the fence?

21 A I can't recognize from that angle. I think
22 you're taking it by the exit guard booth over there, but I'm
23 not certain by the angle of the picture.

24 Q Is the fence uniform around the entire facility?

25 A To the best of my knowledge, except for the

Mullins-cross

gates.

MR. ROSEN: I'll move to offer that in evidence.

THE COURT: Mark it.

MR. SCOTTI: Might I see it?

(Handed to Mr. Scotti.)

THE WITNESS: I would add, that photo you're showing me is taken from a low angle.

MR. ROSEN: I'll accept that.

Q To make it look higher?

A That's correct.

MR. SCOTTI: Might I have a voir dire, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SCOTTI:

Q Inspector Mullins, are you able to tell where this fence is located from this photograph (handing)?

A I don't recognize the ramp, but I haven't been at Building 179 in a couple of weeks. I have been here in Brooklyn in the process of building a new express mail unit there that may be the ramp to the new unit. I'm not certain.

THE COURT: Was that the situation at the time in question?

7

1

Mullins-cross

2

THE WITNESS: There was a fence there, your

3

Honor, but I don't recognize the ramp.

4

MR. ROSEN: I'll withdraw that one.

5

THE COURT: Withdraw the offer?

6

MR. ROSEN: I'll withdraw.

7

Q

Is it fair to say, Inspector, that the fence

8

that had the barbed wire go straight up from the ground and then

9

that barbed wire goes off at an angle?

10

A

Yes.

11

Q

That's to discourage, I guess, people from

12

climbing over that fence?

13

A

That's right.

14

MR. ROSEN: With your Honor's permission, I

15

would like to pass these two exhibits to the jury.

16

THE COURT: You may.

17

(Said photographs were given to the jury.)

18

Q

Inspector, you told us on your direct

19

examination that there were cameras that were working at

20

this facility on September 2, 1975, am I right?

21

A

I believe what I told you the cameras were in

22

operating condition, but they were not working.

23

Q

Were there cameras up on the wall?

24

A

There were cameras on posts within the registry

25

room.

Mullins-cross

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2

Q On posts. This is the registry section, right?

3

(Indicating).

4

A That's right.

5

Q There are posts in this section, right?

6

A Yes.

7

Q How many posts?

8

A I can't tell you the number of posts in there.

9

Q About half a dozen?

10

A About half a dozen.

11

Q On the top of each of those posts were cameras?

12

A That's not correct. I had four cameras in the

13

registry section.

14

Q In this entire --

15

A In the entire registry section.

16

Q Four cameras?

17

A One of them is on the wall. The other three are

18

on posts.

19

Q Did you have any cameras in the vault room?

20

A I'll be happy to show you where the cameras are

21

if you like.

22

Q That's all right, you can answer my question.

23

A I have one camera in the registry vault room

24

mounted on the wallfacing toward the door of the vault room.

25

Q That's a total of five cameras?

Mullins-cross

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1

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A No, that's a total of four cameras.

3

Q Four cameras?

4

At these two -- you say they were operational?

5

A They were operational.

6

Q At the openings to the registry section that you see here on your diagram with the little dots here (indicating), the two exits, there were guards there, isn't that correct, on September 2, 1975?

10

A That's correct.

11

Q Isn't it a fact, sir, that Mr. Walker was under surveillance by you and your colleagues starting in early September of 1975?

14

A Only during those periods of time when he worked in Building 179 at that particular time.

16

Q I see. Did David Walker work in places other than 179?

18

A At that time? No.

19

Q While he was in that building, 179, starting in early September, he was under surveillance?

21

A Until what period of time?

22

Q Let's say until September 21.

23

A He was under surveillance during those periods of time when his schedule and that of Anthony Short were on.

25

Q He was under surveillance at least, for some

Mullins-cross

period of time when he and Mr. Short were working from early September to the 21st of September?

A Yes.

Q And then he was under surveillance at least some period of time after the 21st of September to, let's say, when November?

A He was under surveillance longer than that.

Q How long was he under surveillance?

A He was under surveillance until the time he was arrested, not under continuous surveillance, but under surveillance.

Q By you personally?

A No, not by me personally.

Q Did you supervise this surveillance of Mr. Walker?

A I supervised it at times. Another inspector supervised at other times.

Q Was he under surveillance when he was not in the post office facility as well?

A Not at that particular period of time.

Q What particular period of time was he under surveillance by you and your colleagues?

A I would have to see the documents.

MR. ROSEN: Let me withdraw that, please.

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11 1 Mullins-cross

2 Q You put bugs in his car, sir?

3 A No, there were no bugs in his car.

4 Q Did you put a little homing device so you could

5 trail him?

6 A Yes, I did.

7 Q Did you have a mail cover on him?

8 A Yes.

9 Q Did you trail him up to the house where the

10 money was buried?

11 A Yes, I trailed him to Granville, New York.

12 Q When did you trail him?

13 A I went up in April and I believe I went up in

14 May.

15 Q Of what year, sir, '76?

16 A 1976.

17 Q Did you open up safe deposit boxes?

18 A His safe deposit box was opened by Court order.

19 Q Were you there?

20 A No.

21 Q One of your associates were?

22 A Yes.

23 Q Did you go into his house in Granville, you or

24 your associates, sir?

25 A I entered his house in Granville with a search

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Mullins-cross

warrant.

Q I know you did. I'm not saying there's anything wrong. Did you search the house?

A Yes, I did.

Q Were walls taken apart?

A The only item in the entire house taken apart was the ceiling of one closet.

Q Were drawers opened?

A Yes, they were.

Q Were holes dug?

A Holes were dug --

THE COURT: Excuse me, I have a conference.

Can you break now?

MR. ROSEN: Surely.

THE COURT: 9:40 tomorrow. Good night, have a pleasant evening.

Don't discuss the case.

(Jury leaves Courtroom.)

(Time noted: 4:30 o'clock p.m.)

* * *

2 1 Mullins-cross-Rosen

2 E D M U N D H. M U L L I N S , having been previously
3 duly sworn, resumed the witness stand and testified
4 further as follows:

5 MR. ROSEN: May I have a minute? Some papers
6 were turned over to me by the Government.

7 THE COURT: What papers?

8 MR. SCOTTI: Three very brief xerox papers of
9 some notes that he hadn't found until early this
10 morning which I just turned over to Mr. Rosen.

11 CROSS-EXAMINATION

12 BY MR. ROSEN: (continued)

13 Q Good morning, Inspector Mullins.

14 A Good morning.

15 Q When we left off yesterday I was asking you
16 about various activities by the postal inspectors regarding
17 the surveillance of Mr. Walker; do you recall that?

18 A Yes.

19 Q And just to get us back to where we were, I
20 was also asking you about certain activities regarding the
21 investigation of Mr. Walker? Do you recall that?

22 A Yes.

23 Q All right. Now --

24 MR. ROSEN: Your Honor, I am prepared to
25 stipulate, to save time, that what the inspectors did

Mullins-cross-Rosen

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3 1
2 was under Court order, so that we don't have to -- the opening
3 of Mr. Walker's safe deposit box, I will concede was done
4 with Court order; the putting in of a bug in the car, I will
5 concede --

6 MR. SCOTTI: It was not a bug, your Honor. It
7 was a tracking device.

8 MR. ROSEN: I am sorry. A transmitter. That
9 was with a Court order. The mail cover was done with
10 a Court order. And the entrance into Mr. Walker's
11 home upstate and the search was done with a Court
12 order.

13 MR. SCOTTI: For the record, your Honor, the
14 mail cover did not involve a Court order. The regula-
15 tions of the Postal Service and the law does not
16 require a Court order for a mail cover. But it was
17 obtained in the normal course with thenormal authoriza-
18 tion and approval.

19 THE COURT: That's just making a record of the
20 mail he received.

21 MR. SCOTTL: What it entails is the Postmaster
22 at the Post Office just records the sender of the
23 letter and reports that and then sends the letter on.
24 He doesn't open the letters or anything like that.

25 THE COURT: All right.

Mullins-cross-Rosen

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Q Inspector, when you -- when you and your agents or associates hit Mr. Walker's safe deposit box, did you find any money in there?

A There was nothing in the safe deposit box when it was opened.

Q Did you open it?

A No, I did not.

Q One of the people under your command opened it?

A Yes.

Q And reported to you that there was nothing in the safe deposit box?

A That's correct.

THE COURT: Excuse me. It was literally empty?

THE WITNESS: It was empty.

Q Did you make a report of that?

A The warrant was returned to the U.S. Magistrate that issued it.

Q There are no reports of that, are there, to your knowledge?

A I don't understand.

Q Well, did somebody make a report to you as the agent in charge of the investigation?

A I was told by Inspector Renzulli that the box was empty.

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Q There's no written report?

A It's a matter of written record on the search warrant.

Q I don't understand that. Is there a written report?

A I don't know if it's in any written reports.

Q To your knowledge there is no written report?

A I don't know if it's in any written report.

Q Well, if there was a report, it would go to you as the case agent; am I right, sir?

A If there was a report written on it, I would have written it. I don't remember.

Q Okay. What was found in the house upstate in Granville when you and your associates broke into the house?

MR. SCOTTI: Excuse me. I have two objections. Number one, the question is too broad. And I object to broke into the house after Mr. Rosen said it was done with a Court order.

THE COURT: All right.

MR. ROSEN: I will withdraw it.

Q Let me ask you this. Were you up in Granville at Mr. Walker's house to search the house?

A Yes, I was.

Q Did you forcibly enter the house by breaking a

Mullins-cross-Rosen

1

2 lock?

3

A I did not.

4

Q How did you get into the house?

5

A The lock was picked.

6

Q Oh, picked the lock. But you had a Court order
7 to do that, I understand; is that correct?

8

A That's correct. I had a search warrant.

9

Q You had a search warrant.

10

By the way, were photographs taken by you or
11 your associates of what Mr. Walker's house looked like before
12 you started to search it and what it looked like after you
13 started to search it?

14

A There were photographs taken of the house prior
15 to the search. The reason the photographs were taken was that
16 there had been what appeared to be an attempted forced entry.
17 There was a shovel on the deck of the house below a window
18 next to the door. And it appeared as though someone had
19 attempted to pry the window off the house with a shovel. It
20 was an open window on the side of the house and for this reason
21 the photographs were taken.

22

Q I didn't ask you why. But there were photographs?

23

A There were photographs taken.

24

Q May I have the photographs?

25

A The photographs were taken by the New York State

Police and I do not have the photographs.

Q Well, were you in the house?

A Yes, I was.

Q Were you outside the house?

A Yes, I was.

Q Did you supervise the search?

A Yes, I did.

Q Did you supervise the taking down of the ceiling panels?

A I took down the ceiling panels myself.

Q You took it down yourself.

Did you do any digging in the house?

A Yes.

Q Around the side of the house?

A There was digging done around the outside of the house.

MR. ROSEN: I'm afraid I'll have to mark these, your Honor, for identification.

THE COURT: Well, what are they?

MR. ROSEN: Pictures of the house. I represent they are pictures of the house.

THE COURT: All right. Put them all in one envelope. Mark them in evidence.

Q After the search --

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2 THE COURT: You understand, we are not trying
3 the agents here to determine whether they conducted
4 the search in a proper way.

5 MR. ROSEN: I am not making any claim that they
6 didn't, your Honor. I am not making that claim.

7 THE CLERK: Defendant's Exhibit V marked in
8 evidence and placed in a brown envelope.

9 (So marked.)

10 MR. SCOTTI: Marked in evidence, your Honor?

11 THE COURT: Yes.

12 MR. SCOTTI: May I see them, please?

13 THE COURT: Certainly.

14 Q What I am -- what I am trying to do is determine
15 the extensiveness of the search. I am not claiming that you
16 did anything illegal, but how extensive was the search of
17 Mr. Walker's house and the surrounding land. Would you say
18 it was an extensive search?

19 A It was an extensive search of the house. The
20 search of the land surrounding the house was not extensive.

21 Q What did you find in the house that would be
22 pertinent to your investigation of this theft?

23 A I found nothing in the house pertinent to this
24 theft.

25 Q As a matter of fact, Inspector, under your

Mullins-cross-Rosen

1 supervision bank records of Mr. Walker were subpoenaed; isn't
2 that correct?
3

4 A That's correct.

5 MR. SCOTTI: Excuse me. For the record, I would
6 object to the introduction of these photographs into
7 evidence. We don't know when they were taken or what
8 it relates to.

9 THE COURT: Well, it was taken of the house.

10 MR. SCOTTI: I don't know when, by whom.

11 THE COURT: After the search.

12 MR. SCOTTI: Or what the circumstances were.

13 MR. ROSEN: Could I have --

14 Q Did you receive any information from any of
15 the banks that Mr. Walker did business with?

16 A Yes, I did.

17 MR. ROSEN: May I have that, please, Mr. Scotti?

18 MR. SCOTTI: Do you want the information?

19 MR. ROSEN: I want whatever you've got, yes.

20 Your Honor, now receiving material for the first
21 time. May I? -

22 MR. SCOTTI: I object to this. I object to
23 this. Mr. Rosen has never made any request for it.
24 He waits until he's in front of the jury to make the
25 request. The Government has made repeated requests for

10

1

Mullins-cross-Rosen

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2

reciprocal information which he has refused.

3

THE COURT: Excuse me. What are these?

4

MR. ROSEN: Records of information turned over

5

by the Government from Mr. Walker and bank accounts.

6

MR. SCOTTI: Your Honor, this is a summary

7

which was prepared by the Government's auditor, the

8

postal inspector auditor of the information we received

9

from banks. That is a Government work product. If

10

Mr. Rosen wants the raw files, I will have to dig

11

through each one of the bank files and give it to him.

12

13

(Continued on next page)

14

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19

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24

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Mullins-cross-Rosen

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2 CROSS-EXAMINATION

3 BY MR. ROSEN: (Continued.)

4 THE COURT: Mark it for identification. It
5 seems to me to be essentially work product information
6 otherwise available to the defendant. Return it to
7 the Government.

8 MR. ROSEN: Thank you, your Honor.

9 THE CLERK: Government Exhibit 18 marked for
10 identification.

11 (So marked.)

12 Q Did there come a time, Inspector, that you took
13 the box Mrs. Helton gave you, that metal box, and submitted
14 it for fingerprint analysis?

15 A The box was submitted for fingerprint analysis.
16 However, I didn't bring it down.

17 Q Did you also submit the \$144,000 Mrs. Helton
18 gave you for fingerprint and palmprint analysis?

19 A Yes, I did.

20 Q How about the cardboard box Mrs. Helton gave you,
21 is that also submitted for fingerprint and palm print analysis?

22 A I believe the cardboard box was also submitted.

23 Q Were requests made to the laboratory to compare
24 prints with those of David Walker?

25 A The request was made to compare the prints of

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David Walker, Helen Helton --

Q Would you please answer my question, Inspector?

A I'm trying to answer your question.

MR. ROSEN: Let me withdraw it and ask it again.

Q Was any request made by you to the laboratory to compare the prints found on any of those three items with the palm prints and fingerprints of David Walker, yes or no, please?

A I can't answer that with a yes or no.

Q Inspector, how long have you been with the Post Office?

A Approximately 6 years.

Q How long have you been an Inspector?

A Approximately 6 years.

Q Can you tell this jury whether you made a request that David Walker's palm prints and fingerprints be compared to those which were found on the metal box, the cardboard box or the money; did you make any such request?

A Limiting it to David Walker?

Q Including David Walker,

A Including David Walker?

Q Yes, sir.

A Yes.

Q Tell His Honor and the jury whether any of the

prints found on any of those items compared to those of David Walker, yes or no?

A They did not.

Q They did not compare?

A They did not compare.

Q Did you or any of the agents working under you seize Mr. Walker's white Jaguar?

A Yes.

Q And conduct a search of the Jaguar?

A Yes.

Q Did you find any of the money allegedly missing in that Jaguar?

A No.

Q Do you still have the Jaguar under your control?

A Yes.

Q Did you take sets of keys from David Walker when you arrested him?

A Yes.

Q Were any of those keys the keys of a safety deposit box?

A I don't recall without looking at the inventory. I believe one was a safety deposit box key.

Q Did you find the safe deposit box which that key represented?

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1 A No, I did not.

2 Q Did you look?

3 A Yes, I did.

4 Q Do you have the key here?

5 A I believe I do, yes.

6 MR. ROSEN: Might I have those keys that were
7 seized from Mr. Walker at the time of his arrest?

8 MR. SCOTT: The agent would have to come down.

9 MR. ROSEN: I'll pass on that now.

10 Q In all of the searching through boxes, through
11 the house, the car, did you ever locate any money which you
12 claim was stolen from Kennedy Airport, building 179, on
13 September 22, 1975?
14

15 A No.

16 Q I believe you told His Honor and the jury at the
17 very beginning of your testimony that you were in charge of
18 investigating crimes in the Post Office?

19 A At Kennedy Airport.

20 Q At Kennedy Airport.

21 Maybe we can save time by asking you these
22 questions, Inspector. Do you know of your own knowledge as,
23 I guess, a criminal investigator at the Airport, how many
24 security personnel were on duty at or around building 179 on
25 September 22, 1975, let's say between the hours of 5:00 and

5 1 7:00 in the morning?

2 A On actual post or including the control room?

3 Q Including everybody that was a security guard
4 who reported for work that day.

5 A I can look at the documents and tell you.

6 Q I would appreciate that.

7 A I have --

8 Q You have no idea, is that what your testimony
9 is, that you have no idea --

10 A My testimony is I'll look at the
11 documents and tell you exactly how many.

12 MR. ROSEN: With the Court's permission --

13 THE COURT: Are they here?

14 THE WITNESS: Yes.

15 MR. ROSEN: That will save a whole witness, your
16 Honor.

17 (Witness leaves stand.)

18 (Witness resumes stand.)

19 Q Do you need some time to look at it?

20 A Just a few seconds.

21 Q Yes, sir?

22 A There were 18 security officers on duty at JFK,
23 including all of the buildings.

24 Q There are four buildings?

6

1

Mullins-cross-Rosen

405

2

A Well, three buildings.

3

Q Let's reconstruct it, if we might, Inspector,

4

to this chart which is Government Exhibit 5. Will you tell

5

His Honor and the jury how many of those 18 were working in

6

or about the registry section, this flight deck, or any other

7

place represented by this chart on September 22, 1975 at

8

approximately 5:00 in the morning to 7:00 in the morning?

9

A I'll show on this chart, but I also have to

10

use the other chart.

11

MR. ROSEN: Would your Honor mind if the witness

12

came down, without seeking to destroy the chart further,

13

perhaps put a mark where the security personnel are?

14

THE COURT: Take a red pencil or other color.

15

(Witness leaves stand.)

16

THE COURT: What are you using?

17

THE WITNESS: A red felttip pen.

18

A This is one security force post located here at

19

the exit from the registry room. On September 22, 1975,

20

there was also a security police officer assigned to this

21

exit (Indicating.).

22

THE COURT: The witness is marking the chart

23

with X's.

24

A There is a security police officer assigned to

25

the airline platform. There is a security police officer

Mullins-cross-Rosen

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that has an assigned post outside this portion indicated as the receiving unit (Indicating). That's all I can show on this chart.

Q On that chart. So there would be four on that chart?

A That's correct.

Q Inspector, I don't want to get picky with you, but you kept marking X's by exits. See these two exits here? Actually you mean there's a security officer right by the exit, not the way down here?

A What I mean, he's not required to -- his area may include this area. He's free to walk around in the area if he wishes.

Q With the Court's permission, would you show us on Exhibit 15 in evidence where other security personnel would be positioned or would be assigned on September 22, 1975 at approximately 5:00 to 7:00 in the morning?

A There's a fixed security booth located at the exit at the airmail facility. There's another fixed security booth located at the entrance to the AMF; another fixed security booth located at the employee's entrance from the parking lot into the AMF. In addition to the fixed positions, there are two other positions referred to as roving positions. These roving positions would include a post in this area,

Mullins-cross-Rosen

(Indicating.)

Q Sir, could you do that a little darker so it would remain there, with the Court's permission?

A A roving position for a security officer in this area (Indicating). The officer who is assigned in that particular area is responsible for relief of the other security police officers on their break, on their lunch hour; if they have to take a personal, he would relieve that particular post. At any particular time there's no way of telling whether or not a man is at a location or whether he's somewhere else.

Q I didn't ask you that, but would you please --

A You asked me to explain the posts.

Q Tell us who else is on duty. That's one roving man. How about another rover?

A There's another roving man in the employee's parking lot. This is not a fixed post. This is utilized when we have to send a jeep for gas or send it through the lot on the way out. If a man is coming back from escorting a flight, we'll bring him through the parking lot before he comes into the building.

Q Just to summarize quickly, there are four inside and we see here one, two, three, -- two rovers, that's five, okay, on duty at the facility, right?

A No response.

Mullins-cross-Rosen

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Q That's 5 outside?

A Three outside permanently and two outside occasionally.

Q That would be 5, 3 and 2, right?

A That's correct.

Q The 4 inside would be 9?

A That's correct.

Q Are these trained security personnel?

A Yes, they are.

Q Are there any laymen like myself or members of the jury allowed to rove around this facility?

(Witness resumes the stand.)

A No, they are not.

Q The security force is there to secure the postal employees?

A Security force is there to protect the plant facility and make sure outsiders don't gain entrance.

Q Or things that shouldn't go out don't go out?

A That's correct.

Q One last area, sir. Again, based on your responsibility as the criminal investigator at this security, -- I don't know if we can all see this, but let me try. This area here is called "Supervisor's Parking," am I right?

A Yes.

10

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Mullins-cross-Rosen

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2

Q No question Mr. Walker was a supervisor on

3

September 22, 1975, am I right?

4

A That's correct.

5

Q You here here, were you not when Mr. Marchione

6

drew this picture of a truck on this diagram?

7

A Yes, I was.

8

Q Trucks are parked adjacent to this supervisor's

9

parking, am I right?

10

A Yes.

11

Q That's all still within the fenced-in area?

12

A Yes, it is.

13

Q The supervisors park within the fence and so do

14

the trucks park within the fence?

15

A Yes.

16

Q Are you aware, Inspector, that -- withdrawn.

17

Mr. Marchione indicated the trucks park up

18

against the fence, am I right, they back in up against the

19

fence?

20

A Yes.

21

Q With the front of the truck pointed away from

22

the fence and the back of the truck up against the fence, am

23

I right?

24

A They're in the direction of the fence. I don't

25

know whether he said up against the fence or not. The back

Mullins-cross-Rosen

410

11 1 is towards the fence, yes.

2
3 Q The back of the truck is up against this fence,
4 am I right? (Indicating.)

5 A The back is towards the fence, yes.

6 Q Trucks, the tractor-trailers are forty foot
7 trucks?

8 A Tractor-trailers come in various lengths.

9 Q The big ones are forty foot?

10 A I believe they're forty feet.

11 Q If we had all forty foot trucks they would all
12 be lined up in a row against that fence with the fronts
13 pointing away from the fence, okay, you accept that?

14 A If you had all forty footers I would accept
15 that.

16 Q The truck in question that Mr. Marchione told
17 us about yesterday, that was a smaller truck, was it not?

18 A I don't remember whether he said it was a smaller
19 truck. He said it was a silver truck.

20 Q We'll have to ask him, I guess.

21 Hypothetically, if it was a smaller trailer,
22 tractor-trailer -- let's say a twenty foot tractor-trailer,
23 okay, you're with me?

24 A I'm with you.

25 Q And that was parked in that same area, based on

12

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Mullins-cross-Rosen

411

2 your experience, would the fronts all be lined up together
3 even though the trailer is 20 foot shorter than the big ones?

4 A No response.

5 Q The fronts would all be in the same line, would
6 they not?

7 MR. SCOTTI: I'm going to object to this line
8 of hypothetical questions. I don't see the relevance.
9 It would depend upon how the trucks are parked. I
10 don't know if the witness can answer that.

11 MR. ROSEN: Might I expand?

12 THE COURT: It's not helpful. You can argue to
13 the jury.

14 MR. ROSEN: I want to know, based upon his
15 experience and physical observations, whether he's
16 seen the frnts of those trucks always lined up together
17 when it's required to line up the front of the trucks.

18 THE COURT: Very well.

19 Q Do you know based on your physical experience,
20 visually at the Airport, whether those trucks are always
21 lined up with the fronts all together in a row when they are
22 parked there?

23 A I can only tell you from what I've seen.

24 Q Okay.

25 A And my experience has been as they park them,

13 1

Mullins-cross-Rosen

412

2 some trucks, the backs of some trucks are closer to the fence
3 than others. What the requirements are for parking trucks,
4 I don't know.

5 Q You don't know, okay.

6 MR. ROSEN: I have no further questions. I'm
7 sorry, Judge, I do have one more question.

8 CROSS-EXAMINATION

9 BY MR. ROSEN: (Continued.)

10 Q I was handed this document.

11 MR. ROSEN: I'll have to mark it.

12 THE CLERK: Defendant's Exhibit W marked for
13 identification.

14 (So marked.)

15 Q Mr. Mullins, have you seen this document before?

16 (Handing.) That was just handed to me, Defendant's Exhibit
17 W for identification?

18 A Yes.

19 Q Is that a surveillance report of David Walker?

20 A Yes, it is.

21 Q Did you make this or supervise it being prepared?

22 A Did I make a photocopy or did I make the original?

23 Q Did you have anything to do with the prepara-
24 tion of that?

25 A No response.

14

Mullins-cross-Rosen

413

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Q Was it under your command?

3

A No response.

4

Q Are we having trouble?

5

A I think we're having trouble.

6

MR. ROSEN: Let me withdraw that.

7

Q Were you the agent in charge of this investigation in February of 1976?

9

A During what portion of February?

10

Q February 18th.

11

A It was right around that time that -- I told you the other day I was in the hospital for two weeks. It was in February. I don't remember the particular time.

14

MR. ROSEN: Let me withdraw it.

15

Q Were surveillances of Mr. Walker done under your supervision, your direction, your authority or anyone of these things?

18

A Yes, they were.

19

Q Certainly with your knowledge?

20

A Yes, with my knowledge.

21

Q Was a conversation overheard by one of your operatives or one of your agents of David Walker on February 18th, 1976?

24

A I don't know. I haven't read the notes that I gave you this morning.

25

Mullins-C -s-Rosen

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Q Take a look at this, please (Handing.). See if there's a conversation overheard of David Walker on that day?

A Would you give me the date?

Q It's right there, February 18, 1976.

MR. ROSEN: Might I approach and perhaps direct the witness's attention?

(Mr. Rosen approaches the witness.)

Q You see that?

A Yes.

Q Was there a conversation overheard by one of your operatives that when you hit big on a number somebody goes out and buys a bottle of champagne?

MR. SCOTTI: I'm going to object.

THE COURT: Did you overhear the conversation?

THE WITNESS: I didn't overhear any conversation.

THE COURT: Next question. Go to something else.

MR. ROSEN: I have no further questions.

(Continued on next page.)

Mullins-redirect

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T 2 am 2 REDIRECT EXAMINATION
R 2
SS/bw 3

BY MR. SCOTTI:

4 Q Inspector Mullins, Mr. Rosen asked you if you had
5 sent down for comparison the boxes and things you got, the
6 money, from Helen Helton with the fingerprints of David Walker.
7 You said you had and that the result of that laboratory
8 analysis were negative, there were no fingerprints or palm
9 prints of David Walker's on any of those articles; is that
10 correct?

11 A Yes, it is.

12 Q You said the report you sent down included
13 David Walker. Were there other names, other fingerprints that
14 were submitted with the same report?

15 A Yes, there were.

16 Q Whose fingerprints did you also send down for
17 analysis to see if their fingerprints appeared on the money
18 or the box or the metal box or whatever?

19 A I sent down fingerprints from bank tellers
20 in Milan that had handled the money. I sent down fingerprints --

21 MR. ROSEN: I will object to that, whether he
22 knows who handled the money.

23 THE COURT: I'll permit it. Go ahead.

24 A I sent down fingerprints, I believe, of Anthony
25 Shortt, Helen Helton, I believe, Rosario Marchione. I'm not

Mullins-redirect

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1
2 certain whether that is all the prints I sent down, but I
3 either sent with the report or requested that they obtain these
4 fingerprints and compare them.

5 Q What was the result of the comparison?

6 A They were not able to identify any of the finger-
7 prints developed on any of the bills with any of the finger-
8 prints that they were comparing them with.

9 Q What about the box?

10 A Or the box or the metal box.

11 Q In other words, they weren't able to identify
12 anybody's fingerprints, Mr. Walker's or anybody else's?

13 A That's correct.

14 Q You testified with respect to the security
15 personnel with regard to Government's Exhibit 5, in evidence,
16 which is the chart of the first floor of building 179; that
17 there were two security guards who had posts around the exits
18 to the registry section; is that correct?

19 A Yes.

20 Q You also testified that there was a security
21 guard on the airline platform and one outside by the receiving
22 unit, is that right?

23 A Yes.

24 Q The guards on the airline platform and the
25 receiving unit, are they inside the unit or outside the building?

Mullins-redirect

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A The airline platform and receiving unit guards are outside the building.

Q Outside the building of 179?

A Yes.

Q So that instead of four guards being inside, there are only two?

A Only two in the building, yes.

Q By the way, these guards on this side of the building (indicating) -- withdrawn.

Were these guards inside on this side of the building by the airline platform, the receiving unit have any way of looking through to the flight deck area where it's indicated that the skid was wheeled out?

MR. ROSEN: I object to the form of the question.

THE COURT: Overruled.

A No, there is no way of looking through two sets of walls.

Q What about this guard over here by the con-con desk entrance?

THE WITNESS: May I answer?

THE COURT: Yes.

A You can't see on to the flight deck from inside the building at that location.

Q Would this guard be able to see this area

Mullins-redirect

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1
4 2 (indicating) -- withdrawn.

3 Would he have a good view as this guard over
4 here (indicating)?

5 A It would depend upon the mail or equipment in
6 the area. He might not be able to see it at all.

7 Q You testified that the defendant, Walker, was
8 under surveillance while he was inside the building 179; is
9 that correct?

10 A Yes.

11 Q During the time that he was observed on the
12 surveillance, was he observed pushing or pulling any skids or
13 tubs?

14 A Yes, he was.

15 MR. ROSEN: Could we find out when, if your Honor
16 please?

17 THE COURT: Yes, let's try to pin it down.

18 Q Can you tell us when, Inspector Mullins?

19 A I don't remember the exact date, but I do remember
20 that within the first two weeks of the time the surveillance was
21 initiated, in September of 1975, on several occasions I observed
22 him myself to be handling equipment, pushing mail.

23 Q Inspector Mullins, we have heard much about what
24 Mr. Rosen calls a bugging device, which I call a tracking
25 device affixed to Mr. Walker's car. Would you please tell the

Mullins-redirect

5 ladies and gentlemen of the jury what that is?

3 A The device we utilized as a wagon hut bloodhound.
4 It's a system whereby we put a transmitter on a vehicle which
5 emits a signal and we place a receiving unit in one of our
6 cars which receives that signal and from a determination of a
7 meter on the box in the car we are able to determine the
8 direction that a car takes. With some accuracy we can tell how
9 close we are to an individual, but only in relative terms. We
10 can tell the direction of the signal.

11 Q During the course of your investigation in this
12 case, Inspector Mullins, did you determine where the 12 stolen
13 parcels had been sent from?

14 A Yes, I did.

15 Q Please tell us where they were sent from?

16 A Ten of the parcels were sent from Milan, Italy.

17 Q From where in Milan?

18 MR. ROSEN: I'm going to object to this, your
19 Honor.

20 THE COURT: Sustained.

21 MR. ROSEN: Thank you. I move to strike the
22 answer.

23 THE COURT: Make your objection promptly.

24 BY MR. SCOTTI (Cont'd):

25 Q Did you determine where these parcels were to

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6 go?

MR. ROSEN: I object, if your Honor please.

THE COURT: Sustained.

Q Did you determine whether or not these parcels were ever delivered in the ordinary course of the mails?

MR. ROSEN: Objection to that.

THE COURT: Sustained.

MR. SCOTT: I have no further questions.

REXCROSS-EXAMINATION

BY MR. ROSEN:

Q You say you saw Mr. Walker pushing mail around the facility on several occasion?

A I saw him handle mail, yes.

Q What do you mean handling mail, pushing skids, tubs?

A Either pushing a skid or tub. I don't recall at this particular time.

Q Where were you when you saw him, up in the tower there looking through a peephole?

A In the lookout gallery, building 179.

Q There is like a balcony where you guys go through to watch the people downstairs, right?

A Yes.

Q When you saw David Walker pushing all this mail,

1
2 did you go down and arrest him?

3 A No.

4 Q Nothing wrong with him pushing mail, is it?

5 A No. It's unusual for a supervisor --

6 THE COURT: Excuse me.

7 MR. ROSEN: Move to strike.

8 THE COURT: Yes, you weren't asked anything
9 further. Strike that.

10 MR. SCOTTI: Thank you, Mr. Mullins.

11 THE COURT: Next witness, please.

12 (Continued next page)
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1 (The following took place in the absence of
2 the jury.)

3 THE COURT: Yes?

4 MR. ROSEN: May it please the Court --

5 MR. SCOTTI: Your Honor --

6 MR. ROSEN: I have an application to make.

7 MR. SCOTTI: No, let me --

8 THE COURT: Excuse me. I will hear you.

9 MR. SCOTTI: Well, I was going to make a
10 statement for the record before Mr. Rosen talks to
11 the Court. I was waiting for the Court -- your Honor
12 to be through with the calendar.

13 THE COURT: He has an application. I will be
14 happy to hear the application before me.

15 MR. ROSEN: Your Honor, at approximately 10
16 o'clock this morning I called -- Mr. Scotti handed me
17 3500 material of Agent Mullins given to the Grand Jury
18 on August 17, 1976, which material I have read
19 through twice. And I can tell your Honor there is
20 substantial material in here that I would have used
21 on cross-examination.

22 THE COURT: Mark it for identification.

23 What is your application?

24 MR. ROSEN: I have to move at this time, most
25 respectfully, for a dismissal of the indictment.

1 THE COURT: I am not going to dismiss the
2 indictment.

3 MR. ROSEN: And/or in the alternative for a
4 mistrial.

5 THE COURT: You are moving for a mistrial?

6 MR. ROSEN: Yes.

7 THE COURT: Let me look at this material.

8 MR. SCOTTI: Can I make a statement?

9 THE COURT: Certainly.

10 THE CLERK: Jurynote marked as Court Exhibit 12.

11 MR. SCOTTI: There's no question, your Honor,
12 that I forgot to give Mr. Rosen the Grand Jury
13 minutes of Mr. Mullins. Your Honor will recall that
14 at the timethat Mr. Mullins was called -- I am not
15 saying this by way an an excuse. I'm saying it by
16 way of fact. The Government was putting witnesses on
17 very quicklv. Your Honor called me to the Bench, to
18 the sidebar with Mr. Rosen to ask -- for the purpose
19 of Mr. Mullins' testimony. I explained to your
20 Honor the questions that I wanted to ask Mr. Mullins
21 and why I wanted to ask them. And counsel acting --
22 possibly as a defense strategy, and your Honor allowed
23 me to use Mr. Mullins for a limited purpose. I think
24 your Honor told me to limit myself to the questions you
25 allowed.

1 At that point Mr. Mullins was put on the stand.
2 And I -- Mr. Rosen, although he asked me for
3 material as to other witnesses throughout the trial,
4 and I, indeed, had given him material as to other
5 witnesses without his asking. He did not ask me if
6 there was any 3500 material on Mr. Mullins. And I
7 simply forgot to give him.

8 Mr. Mullins testified to the very limited
9 area on direct. And then Mr. Rosen took Mr. Mullins
10 basically as his witness -- I think the record
11 reflects that -- and examined him on things which went
12 far beyond anything the Government did in its direct
13 examination.

14 In reviewing the Grand Jury minutes, I must --
15 before I get into that, I must state to your Honor
16 that the first time I realized I hadn't given the
17 Grand Jury minutes of Inspector Mullins was last night.
18 And when I came in this morning, I got the minutes
19 and gave them to Mr. Rosen.

20 In reviewing the Grand Jury minutes, I don't
21 find anything in there -- contrary to what Mr. Rosen
22 says -- which would in any way have affected the
23 outcome of the presentation of the evidence or could
24 in any way possibly, let alone beyond a reasonable
25 doubt, affect any verdict the jury may render in this

1 case. In fact, Mr. Rosen has told me in the hallway
2 that there is one particular portion of the transcript
3 testimony, the Grand Jury transcript testimony that
4 he is very concerned about. I tried to explain to
5 Mr. Rosen what that Grand Jury testimony relates to.
6 And, in fact, if that had been gone into by
7 Mr. Rosen, it would have been detrimental to the
8 defense and very helpful to the Government.

9 Of course, the Government did not go into
10 that area with Inspector Mullins on its direct
11 examination. As your Honor recalls, the Government
12 was instructed to limit its questions very severely
13 with regard to Inspector Mullins.

14 I don't think that there is anything that can
15 be reasonably interpreted in the Grand Jury minutes
16 to warrant any of the relief sought by Mr. Rosen
17 at this time.

18 MR. ROSEN: May I be heard?

19 THE COURT: Well, let me say at the outset,
20 if this were an isolated instance it would not be
21 objectionable. But, Mr. Scotti, you have
22 consistently during this trial attempted to hold up,
23 in my opinion, these 3500 materials until the last
24 moment.

25 MR. SCOTTI: Your Honor --

1 THE COURT: That's for tactical advantage,
2 at least in my opinion, rather than giving them to
3 the defendant in advance and in a simple way so you
4 got it out of your desk and on to his, thus
5 avoiding this kind of mistake that has occurred on a
6 variety of occasions in this Court during the
7 hurly-burly life of the trial.

8 Now, this kind of tactic, although it is, as
9 you have properly pointed out to me, permissible to
10 the Government, seems to me constantly leads to this
11 kind of mistake. I have had it in my cases a half
12 dozen times. As a matter of fact, in one case I had
13 a reversal for this silly thing. Because when
14 counsel gets involved in the trial, there are a
15 thousand things on his mind and he can't remember to
16 do these things.

17 I thought we had worked it out with Mr. Trager
18 so that this wouldn't be happening. If you had
19 turned it over in advance and you had a check list --
20 you knew the witnesses you are going to call. You
21 turn over the material. Counsel for the defendant
22 looks at them. We don't have to have a continuance
23 and the trial runs more smoothly. This is the
24 result of this kind of sharp -- what I consider
25 sharp practice by the Government, although the

1 Government is properly and justifiably doing it
2 under the statute.

3 MR. SCOTTI: Your Honor, may I respond to that.

4 THE COURT: Of course.

5 MR. SCOTTI: With all due respect -- I hope
6 you appreciate, with all due respect --

7 THE COURT: Yes.

8 MR. SCOTTI: I take strong exception to your
9 Honor's characterization of me and of the Government's
10 tactics as being a -- with regard to this 3500
11 material as being a tactic which is calculated to
12 gain some advantage. I think the record will
13 adequately reflect that throughout the course of the
14 pre-trial discovery in this case, I have given
15 everything to defense counsel. With Mrs. Helton's
16 testimony, I gave him the 3500 material in the
17 beginning of the day.

18 Now, Mr. Rosen said at lunch time that he --
19 after the luncheon recess that he hadn't read through
20 it all. I gave it to him at the beginning of the
21 day.

22 With Mr. Marchione, he had it overnight. I
23 gave it to him in the beginning.

24 THE COURT: Why didn't you give it to him at
25 the beginning of the trial.

1 MR. SCOTTI: Your Honor --

2 THE COURT: A lot of time wasted. At the
3 beginning of the trial when we are getting jurors
4 together, while we are handling other things. You've
5 got a capable opponent on the other side. It is not
6 as though he were a member of the Mafia that he
7 couldn't trust.

8 MR. SCOTTI: I respectfully submit -- I most
9 respectfully submit that is beside the point. The
10 only --

11 THE COURT: Well, it's exactly the point.
12 That's why this happens all the time.

13 MR. SCOTTI: Your Honor, the only time that
14 the 3500 material testimony was given to Mr. Rosen
15 at the time the witnesses were testifying before the
16 Government put the witness on the stand were isolated
17 instances. I think there were two or three instances
18 where the 3500 material consisted of one or two
19 or three -- maybe three pages. And it certainly
20 wasn't any burden to read through that 3500 material
21 at that time.

22 THE COURT: You don't listen to what I am
23 saying. I am telling you that if you know the
24 witnesses, as you did in this case, who are going
25 to testify and you make a list of them and you turn

1 over the material quietly and calmly before the
2 trial begins so you don't have this on your mind, we
3 don't have this kind of nonsense.

4 MR. SCOTTI: Your Honor --

5 THE COURT: But the Government --- at least
6 some attorneys -- doesn't seem to be a consistent
7 practice in your office. Some attorneys do that.
8 And those cases go off like silk.

9 MR. SCOTTI: Well --

10 THE COURT: In this case I wasted at least
11 two hours of trial time because the defendant
12 was able to make the claim -- whether justified or
13 not is not my concern -- and he needed time to read
14 the papers.

15 MR. SCOTTI: And that time was with regard to
16 Mrs. Helton. He was given the material before she
17 took the stand.

18 THE COURT: Well now, we have the situation
19 and you still apparently haven't learned anything.

20 MR. SCOTTI: I still want to put on the
21 record, this was not a tactic by the Government to
22 gain any advantage. Certainly there would be no
23 advantage to be gained at all.

24 THE COURT: Yes, there is a tactic to be
25 gained. And the tactic is that you throw your

1 opponent off balance. He uses the same tactic and
2 you use it. I saw it in Court. And I understand
3 it's constant and I -- a standard tactic to get
4 your opponent slightly off balance. It's done all
5 the time.

6 MR. SCOTT: I don't understand that because
7 he certainly could ask for an adjournment, which he
8 did, for the time to read the testimony right in
9 front of the jury. If anything, it seems to me to
10 be a disadvantage of the Government --

11 THE COURT: Both of you are skilled at using
12 these witnesses, including Mr. Rosen with his
13 smile and ingratiating manner, which is all part of
14 the tactic. I don't criticize him. And you have the
15 same tactic. I don't mind it as long as it doesn't
16 interfere with my getting cases tried and out. This
17 kind of tactic, I don't like simply because it slows
18 me up. I am not concerned about anything else but
19 getting these cases decided quickly and properly.

20 Now, I say in this case I lost two hours of
21 trial time and now I have this silly motion before
22 me while I have a jury that has been out for a day
23 and a half.

24 I don't say "silly" in the sense that it's
25 not a substantial motion. But it's silly in the sense

1 that I shouldn't have to have it.

2 Go through this record and show me exactly
3 what you would have used and why it is prejudicial.

4 MR. ROSEN: Yes, sir. I would have used at
5 page --

6 THE CLERK: Marked as Defendant's Exhibit AA
7 for identification.

8 MR. ROSEN: Starting at page 9, your Honor,
9 if your Honor please, where Mr. Mullins told the
10 Grand Jury that the surveillance of Mr. Walker
11 continued until December, 1975, when the foreign
12 dispatch unit moved into another building, Christmas-
13 time, because they get a heavy concentration of
14 mail, and he says here that David Walker went with
15 that dispatch unit to the other building. The
16 surveillance had to be discontinued because of the
17 new building. There is no surveillance potential.
18 That is absolutely not true.

19 Mr. Walker did not go with the unit. He was
20 specifically kept on in Building 179 to be kept
21 under surveillance. Mr. Walker did not get
22 transferred. And I would certainly be able to
23 develop that.

24 THE COURT: No. That is just on the
25 credibility of the witness Mullins. It's got no

1 substantial significance of any kind with respect to
2 guilt or innocence.

3 MR. ROSEN: On page 9, I would then be able to
4 show that Mr. Mullins testified that these parcels
5 were not registered parcels at all, did not -- they
6 would not have gone into that -- registry insured
7 parcels do not -- are not handled the same way.
8 They do not come through that section.

9 I am not familiar with the exact terminology,
10 but when they are insured, this Miska or Con-Con,
11 they are not regular registered mail, although he
12 had said so in the Grand Jury that they were. I
13 would have been able to prove that they were not --
14 in any event, they were not registered mail.

15 THE COURT: What difference does it make/

16 MR. ROSEN: That these parcels were not in
17 that registry room. That is a very critical point.
18 Insured parcels rather than registered -- they were
19 not registered.

20 THE COURT: Why didn't you --

21 MR. SCOTTI: In the Grand Jury minutes it
22 really says at page 10 that these were insured
23 parcels coming into the United States, and the
24 procedure at Kennedy Airport is that they go into the
25 registered section.

1 MR. ROSEN: I would dispute the --

2 INSPECTOR MULLINS: May I state --

3 THE COURT: Cross-examine him now on it. Let's
4 see what it is.

5 INSPECTOR MULLINS: Your Honor, all insured --

6 THE COURT: Excuse me. I don't want to --

7 Cross-examine him on that point right now and
8 let me hear what you would have developed.

9 MR. ROSEN: Okay.

10 EXAMINATION OF THE WITNESS, EDMUND MULLINS,

11 BY MR. ROSEN:

12 Q Inspector Mullins, is it a fact that you
13 testified before the Grand Jury that these were insured
14 parcels rather than registered parcels?

15 A I testified that the ten of them were insured
16 parcels, yes.

17 Q The ten which you claimed had \$80,000 in each
18 of them?

19 A That's correct.

20 Q And isn't it a fact that insured parcels are
21 handled differently than a regular registered parcel, if you
22 know? Do you know if insured parcels are handled in any way
23 differently than a registered --

24 A They are handled differently, yes.

25 Q All right. Would you tell us in what way

Mullins

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they are handled differently?

A I will be glad to. All insured parcels are initially brought into the registry section at Kennedy Airport, with the exception of India, Italy, Germany, the Netherlands and Switzerland. All parcels from -- all parcels from India, Italy, Germany, Netherlands and Switzerland, since November, 1974, by logistics order have remained within the registry section at Kennedy Airport. Insured parcels from all other countries are gone through. Those valued at under \$250 are sent to Annex Number 3, and those valued at over \$250 are kept within the registered section.

Q Thereafter, what is the movement of the insured parcel over \$250?

A With regard to which countries?

Q Looks like Italy.

A Italy, they are handled as registered mail. Dispatched out as registered mail by the logistics order and by reaffirmation of postal bulletin.

MR. SCOTTI: Mr. Rosen was given that information in discovery.

MR. ROSEN: What information.

THE WITNESS: He has the operations order.

MR. SCOTTI: I gave it to him in December.

MR. ROSEN: May I, your Honor.

(Whereupon, the jury retired from the courtroom.)

MR. SCOTTI: For the record, I would have objected to that charge, but it's too late now.

(Recess taken.)

THE COURT: All right, take the stand, Mr. Mullins.

EDMUND MULLINS, having been previously duly sworn, testified further as follows:

EXAMINATION

BY MR. ROSEN:

Q Mr. Mullins, are you personally familiar with how insured packages were handled that came in from Italy to building 179 on September 22, 1975?

A Yes, I am.

Q All right. Now, isn't it a fact that there is a person by the name of Mrs. Samuels, who was the insured receiving clerk that day or that morning at JFK Building 179?

A I think so. You have the documents right now. I don't know. If her initials are on the bottom.

Q Sir -- No, I don't have any document. You heard of Mrs. Samuels, the insured receiving clerk?

A She opens the insured bags, yes.

Q Right. When she opened the bags and they are determined to be of her of high value, she herself makes up the parcels; isn't that true?

Mullins

A No.

Q Doesn't she -- doesn't the insured receiving clerk have the parcels stamped by a Customs man, insured, valuable parcels, stamped by a Customs man, sir?

A Anything that is valuable that goes into the vault are stamped by a Customs man in the vault. We don't give them to the Customs people.

Q Any of these parcels here, any of the packages here indicate that they were stamped by a Customs man?

A I don't have the parcels. I don't know whether they were stamped or not.

Q Well, on your records --

A They don't. The records would not reflect it. The only thing that would reflect whether or not they were stamped is by the parcels.

Q That's a distinction between regular and insured mail?

A No.

Q All registered mail is stamped by Customs people?

A Registered mail. Parcel type mail is examined by Customs people and either stamped liable for duty or stamped pass free.

Q Is it your testimony that Helen Helton would have made up parcels of insured valuable, non-registered on

Mullins

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2 that morning?

3 A I believe I stated to your Honor before that
4 all insured parcels from Italy are handled as registered mail
5 at Kennedy Airport and from Kennedy Airport throughout the
6 domestic registry system.

7 Q Would it include parcels of high value?

8 A Any insured parcel.

9 Q No. Couldn't it be a \$250 parcel?

10 A All insured parcels from Italy are handled as
11 registered mail.

12 Q And you are telling me that Helen Helton would
13 have made up a canvas sack of insured parcels just like she
14 did the registered parcels? Yes, or no, please?

15 A Helen Helton would have made up insured parcels
16 in a registered mail bag, because at that point they are
17 considered to be domestic registered mail.

18 MR. ROSEN: Just a moment, if your Honor please.

19 Q Let me ask you this, again, Inspector:

20 Isn't it a fact that the person in Kennedy
21 Airport, building 179, who handles insured parcels of high
22 value -- okay -- makes up his own mail sack as opposed to
23 somebody in the registry room like Helen Helton?

24 A It can be done if it's recognized as high value.
25 Sometimes they do not make these dispatches.

Mullins

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Q Isn't it a fact that parcels coming in insured directed to a bank would be deemed just such a kind of high value parcels?

A No, it is not.

Q No?

A No.

MR. ROSEN: I have to go on to something else, your Honor.

I don't really know basically the procedure, but I would represent to your Honor -- I must respectfully represent to the Court that I have information that is not in accordance with that. But that is not my problem.

THE WITNESS: Your Honor, I --

THE COURT: I do not want to hear -- With all due respect, I want you to indicate to me how your examination would have been different if you had this information. So go ahead and examine.

MR. ROSEN: Okay, your Honor.

Q Now, isn't it a fact, Mr. Mullins, that you testified before the grand jury that ten of the parcels, ten of the twelve we are talking about, the ones that came in from Italy, came in to Kennedy Airport and were entered in that value cage at 4:30 in the morning of September 22, 1975? Did

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Mullins

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2 you say that before the grand jury?

3 A If it's in the record, I said it.

4 MR. ROSEN: I most respectfully represent that
5 it is in there.

6 THE COURT: All right.

7 MR. ROSEN: I don't think I have to examine
8 much more on that. It would have been a critical
9 thing for me to examine Mr. Marchionni and the agents
10 if the parcels came in at 4:30, Judge, when Mr. Walker
11 is already out to lunch. It just couldn't have
12 happened the way the testimony says it happened.
13 They didn't even get into that value room until 4:30.
14 Nobody knew it was there until 4:30. And I think it's
15 a very critical -- most respectfully, based on the
16 testimony we have here, a critical thing, and I could
17 have developed through the inspector that they didn't
18 even get there, because I asked Mrs. Helton and she
19 didn't know when they got there. There's nothing on
20 the documents.

21 I understand your Honor may be impatient with
22 me, but I would like to do it.

23 THE COURT: I am not impatient.

24 MR. ROSEN: You're shaking your head, "no."
25 Maybe you disagree with me. There's nothing on either

Mullins

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2 exhibit 6, Judge, or that vault log. And I asked
3 Mrs. Helton very specifically, could you tell me the
4 exact time as these things --

5 MR. SCOTT: Your Honor --

6 THE COURT: But that has nothing to do with this.
7 It's quite clear through the entire testimony that
8 there was a target of opportunity. It was just a
9 chance. She went in and got some stuff. It doesn't
10 make any difference whether it was there 24 hours or
11 24 seconds.

12 MR. ROSEN: No, no.

13 THE COURT: And nobody else knew where the
14 specific parcels were coming from Italy. It's never
15 been any part of the theory. This is really all
16 irrelevant.

17 MR. ROSEN: But at -- between four and five --
18 Mr. Marchionni testified between four and five
19 Mr. Walker came up to that swing room and already --
20 starting at 4 o'clock in the morning, Judge.

21 THE COURT: 4:30.

22 MR. ROSEN: No, your Honor. Most respectfully,
23 page 313 of the record, it says that at between
24 4 o'clock and 5 o'clock Dave Walker came up to that
25 swing room and asked them, does he have --

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2 THE COURT: What time did Marchione go out to
3 lunch?

4 MR. ROSEN: Walker went from 4 to 4:30.
5 Marchioni from 4:30 to 5.

6 THE COURT: That's exactly it. When Marchioni
7 was out to lunch the packages had already arrived.

8 MR. ROSEN: The packages arrived at 4:30.
9 Marchioni went out to lunch at 4:32, Judge. I think
10 it would have been important for me to argue that
11 what they are saying here, this whole thing was
12 crystallized in a two-minute period between 4:30 and
13 4:32. And I think it would have been most critical.

14 THE COURT: Nothing to do with anything, with
15 any point in the case.

16 MR. SCOTTI: Your Honor, as you have already
17 articulated, I would point out that Government exhibit
18 6 in evidence, which Mr. Rosen just referred to, is --
19 does not indicate any time. It does indicate that the
20 parcel was made up. The bag that was stolen was made
21 up by Mrs. Helton sometime after 5 o'clock. He had
22 cross-examined Mrs. Helton on that. It does state a
23 time.

24 MR. ROSEN: Judge, what I think is critical,
25 most respectfully, is that I could have developed with

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2 Mr. Mullins and argued to the jury that now we know
3 exactly when this parcel came in, because there was
4 testimony that it was left over from 2 or 3 the day
5 before. We have that in the record. And it's
6 absolutely not so.

7 Mr. Walker just couldn't -- could not have --
8 Mr. Walker could not have gone up there between 4 and
9 5 and say there is a bag from Miami going to the West
10 Indies. And the testimony is it was left over from
11 2 or 3 and came through that wind tunnel.

12 THE COURT: It's clear what happened, that the
13 defendant Walker was telling Marchioni something that
14 was untrue in order to mislead him, to come down with
15 the hope that Mrs. Halton would get a package together.

16 MR. ROSEN: I am not going to belabor it. I
17 submit that it would have been important for me to
18 argue to the jury that the inspector's investigation
19 determined that the parcel didn't get to Kennedy, into
20 that room, until 4:30.

21 THE COURT: Yes, I understand.

22 MR. SCOTT: May I be heard?

23 THE COURT: But it's really irrelevant to
24 anything in the case.

25 MR. ROSEN: I respectfully --

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2 MR. SCOTTI: For the record, Mr. Rosen is
3 incorrect as to the total number of parcels. I agree
4 that it's irrelevant, but for the record, exhibit 7
5 in evidence clearly shows that the two Granda parcels
6 did come in at 2:03 on 9/21, which is September 21st,
7 which would have been the 203.

8 THE COURT: It doesn't make any difference
9 whether it was there a week.

10 MR. SCOTTI: I agree with your Honor, but just
11 for the record, the record does show it did come in on
12 203.

13 MR. ROSEN: Shall I go on as if I had this
14 material?

15 THE COURT: Yes, please.

16 Q Now, Mr. Mullins, did you answer -- this is
17 page 12, before the grand jury:

18 "In connection with this investigation, did you
19 determine who else was on duty the night or early
20 morning of September 22, 1975?

21 "Answer: The foreman of the registry room on
22 that date was David Walker. I found all twelve parcels
23 listed on a bill for the Church Street Station."

24 MR. ROSEN: May I have that?

25 "The next step in procedure in the registry room

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1 would have been for the bag itself, which is identified
2 by a rotary lock number, to be listed on another bill
3 going to GPO, New York. We have searched all of the
4 records and there is no record of that rotary lock
5 ever being listed on the bill going anywhere from
6 Kennedy Airport."
7

8 THE COURT: That's exactly confirmatory of
9 Mrs. Helton's testimony.

10 MR. ROSEN: Government exhibit 6, your Honor,
11 has a rotary lock number on the record which he says
12 did not exist.

13 THE COURT: Well --

14 MR. SCOTTI: No, your Honor, that is not the
15 record. The witness will be able to explain rather
16 than Mr. Rosen making statements.

17 MR. ROSEN: I am sorry, Judge.

18 Q Did you -- I show you Government's exhibit 6.
19 Is this an exhibit containing the parcel numbers of the ten
20 parcels that come in from Milan and the two from Granda
21 that we are talking about in this whole case?

22 A Yes.

23 Q Do you see in the top right hand corner, lock
24 number 445? Do you see that? Or 58, or whatever the number
25 is?

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2 A Yes, there is a lock number.

3 Q Is there a rotary number on there, 402?

4 A Yes, there is.

5 MR. ROSEN: Your Honor, I would have most
6 respectfully --

7 THE COURT: What is the explanation?

8 THE WITNESS: Well, your Honor, I --

9 Q What is your explanation?

10 A I said it in the grand jury. There's no record
11 of this lock number that is on this bill being listed anywhere
12 from Kennedy Airport. I mean the lock number up here goes on
13 another bill to be listed out. And we have checked the records
14 and it is not listed out.

15 Q Well --

16 A This is a content bill, your Honor.

17 THE COURT: A what?

18 THE WITNESS: This is a content bill. This
19 tells you what is inside this rotary lock. Now, to
20 find out if this rotary lock goes anywhere, we look at
21 another set of bills like this one. Instead of having
22 registered numbers, we have rotary numbers.

23 THE COURT: When the bags go out of Kennedy
24 with rotary locks on, they show the rotary lock --

25 THE WITNESS: The rotary lock is listed like the

1 registered numbers are listed. And as I said in the
2 grand jury, it is not listed out.

3 THE COURT: That is confirmatory.

4 MR. ROSEN: I would object to what he said.
5 There is no record of that rotary lock ever being
6 listed going anywhere from Kennedy Airport. I don't
7 know what bill --

8 THE COURT: He just explained --

9 MR. ROSEN: Where is the bill? Where is the
10 bill that showed anything about these packages after
11 this?

12 THE COURT: There isn't any.

13 THE WITNESS: There isn't any.

14 MR. ROSEN: All right. Fine. Then I would
15 have certainly suggested to the jury that there was a
16 lock number put on at least this bill. I mean his not
17 being able to find any records, I could have argued
18 that there is a lock number on the bill, talking about
19 these parcels, and that part of the procedure, the
20 parcels coming out of Kennedy Airport --

21 THE COURT: But this is exactly confirmatory of
22 the Government's case. I don't see how you would gain
23 anything.

24 MR. ROSEN: Well, I -- all right. I made my
25

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position on the record.

THE COURT: All right, what else?

MR. ROSEN: The next is on page 13.

Q Mr. Mullins, were you asked this question and did you give this answer with regard to David Walker:

"What kind of an investigation did you conduct?"

"Answer: I conducted an investigation into his finances."

Did you ascertain how much property he owned?

A Yes.

Q Did you ascertain the fact that he had purchased certain stocks?

A Yes.

Q Did you talk to somebody who -- who he purchased the stocks from?

A Yes.

Q Do you say in your grand jury testimony when that purchase of 200 shares of Pan American for \$11,000 was made?

A Without looking at the transcript, I can't tell you.

MR. ROSEN: I will submit that he -- the inspector does not give a date as to when this purchase of 200 shares of Pan American was made.

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2 THE COURT: You mean you would have listed this
3 before the grand jury?

4 MR. ROSEN: Well, your Honor --

5 THE COURT: To show more assets?

6 MR. ROSEN: On the same basis that he could
7 have contracted for this house prior to September 22,
8 1975. He could have purchased -- it's for cash,
9 11,800 shares of Pan American prior to September 22nd.

10 MR. SCOTTI: Your Honor --

11 MR. ROSEN: I would have developed that fully.
12 Yes, I represent to your Honor that I would have.

13 MR. SCOTTI: Your Honor --

14 THE COURT: It seems to me not to have any
15 particular significance, since your own client will
16 tell you that. No.

17 MR. SCOTTI: For the record, this cash purchase
18 was made well after -- Well, a couple of months after
19 the theft in question.

20 MR. ROSEN: That would be a big dispute, Judge.

21 MR. SCOTTI: We have the records. If Mr. Rosen
22 wants to bring in the man who got the cash from
23 Mr. Walker, he's free to talk to him. We have the
24 stock account records, all the documents.

25 THE COURT: I can't believe you would have done

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skillfully as you are, but go ahead.

Q Mr. Mullins, were you asked the following question on page 15, and did you give the following answer:

In regard to the closing of the apartment house, you know what I am talking about?

"Answer: Yes.

"Question: Were the attorneys at the closing for the sale of these apartment buildings? Were they interviewed?

"Answer: yes, they were.

"Question: What, if any information was related to inspectors Caldwell, Goren, which was then related to you?

"Answer: At the time of closing, when it came time to produce a certified check or cash to close the deal, David Walker opened up his briefcase and dumped a pile of cash on the table which was described as the biggest amount of money that anybody had ever seen."

MR. ROSEN: I most respectfully say or suggest that that differs with what Mr. Kershaw testified as to how the transaction occurred and whether David Walker dumped it on the desk or in the regular course of business opened up a briefcase and handed legal tender to purchase these houses. There is a

Mullins

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2 difference there.

3 THE COURT: That is all adverse to your client.
4 Certainly when he testified in this court he knew I
5 wouldn't permit him to put in such objectionable terms.
6 We don't have the rules of evidence applying in the
7 grand jury room. That's why.

8 Q Did you continue to answer as follows:

9 "He" -- meaning David Walker -- "took the cash
10 to a bank and got a certified check for it. The
11 people at the bank who counted the money were inter-
12 viewed. They verified it was David Walker who brought
13 the cash in and received a certified check."

14 Did you tell the grand jury that Mr. Walker
15 went with the attorneys and other people to the bank?

16 MR. ROSEN: And I represent, your Honor --

17 MR. SCOTTI: If he was asked, I don't see the
18 relevancy of that at all.

19 THE COURT: Well, go ahead. Develop it.

20 Q When you spoke to the lawyers or to the man
21 who sold the building to Mr. Walker, did they tell you or did
22 you ascertain that David Walker with others went to the bank,
23 the Chase Manhattan Bank, to substitute the check for the
24 cash?

25 MR. SCOTTI: Your Honor --

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A I never spoke to anyone.

Q You never spoke to anybody.

MR. SCOTTI: I believe the testimony --

THE COURT: Excuse me. Let him develop it.

Q Did you say the attorneys at the -- the attorneys at the closing for this sale of these apartment buildings, were they interviewed?

And you answered, "They were -- they were interviewed."

MR. ROSEN: Upon those --

MR. SCOTTI: And the very next question --

THE COURT: Excuse me. Let him ask the question.

MR. ROSEN: But the witness states who interviewed him.

THE COURT: Let him develop his own --

MR. SCOTTI: I am sorry.

Q "What if any information was related to inspectors Caldwell and Goring which was then related to you?"

"Do you remember being asked that question?"

A Yes.

Q Okay. Then you answered as I just read. Okay. Was it related to you before you went into the grand jury that David Walker didn't go down to the bank alone, but went with other people, lawyers and actually people who

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2 witnessed the transaction?

3 A Yes, I think it was.

4 Q Right. Does that appear before the grand jury?

5 A You just read it. I didn't say it.

6 Q Okay. That's all I am trying to develop.

7 MR. ROSEN: I would have used that to show
8 some sort of attempt, most respectfully, to show the
9 grand jury that this was some kind of stealthy
10 transaction where he snuck down to the bank and tried
11 to convert cash into the bank check.

12 MR. SCOTTI: Your Honor, that's irrelevant.
13 Any attack he wanted to make in the grand jury
14 proceeding, but not a trial --

15 THE COURT: I think it was irrelevant. It
16 wouldn't have any bearing on credibility.

17 (continued next page)
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Q Now, did you also testify as follows, with

3 regard to the purchase of these buildings:

4 "Did you yourself conduct the investigation or
5 did other postal inspectors do it?"

6 MR. SCOTTI: Excuse me. Where are we?

7 [MR. ROSEN: Let's go to page 15. Let's go over
8 to page 15, to the bottom.9 Q "Question: Now, was there any record that
10 you discovered during the course of your investigation which
11 would indicate the amount of cash which David Walker brought
12 to the bank?13 "Answer: Yes. There was an IRS form filled out
14 by David Walker indicating the amount of cash, which
15 was \$100,020.49."

16 Did you ever see that form?

17 A Yes.

18 MR. ROSEN: I would have certainly gone into
19 that, Your Honor, and argued most strenuously.20 THE COURT: Yes, you would have.21 Where is that IRS Form? Why wasn't it turned
22 over as Brady material?23 MR. SCOTTI: Because, yo ar, he put the
24 wrong social security number down. It is the wrong
25 social security number. It is not the social security

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number of the defendant.

THE COURT: All right. You would have opened the door to that and it would have been absolutely murderous.

MR. ROSEN: Let me see it.

THE COURT: Mark it for identification.

MR. ROSEN: All right, let's see. I just asked Mr. Walker what his social security number was.

THE COURT: If you continue at this rate the Government will join you in your application for a mistrial.

MR. ROSEN: I am doing the best. You will have to bear with me. I mean, you know--

THE COURT: All right. Continue while they look for the document.

Q Did you testify --

MR. ROSEN: This may be academic.

THE COURT: Go ahead.

MR. SCOTTI: I am sorry. I have it right here.

THE COURT: All right, mark it for identification.

MR. SCOTTI: Mark it as a Government exhibit.

THE CLERK: Government exhibit 19 marked for identification.

MR. ROSEN: I would only suggest that the

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transcript --

THE COURT: I will write at the bottom, these statements were not admitted into evidence.

MR. ROSEN: But portions of the statement are in the transcript.

MR. SCOTTI: Now, your Honor, I was specifically precluded from bringing this out on direct and specifically precluded from bringing it out on redirect.

THE COURT: That's correct. Because of the rule of hearsay.

MR. SCOTTI: No, not because of the rule of hearsay. It is my understanding, your Honor, of the rules, with all due respect, I thought your commentary said that if the witness has made a prior statement which was untrue the Government has a right to bring that out on direct examination and explain it and certainly after defense counsel cross-examined it. The Government has a right under rehabilitation to explain that to the jury. The Government was not allowed to do that.

THE COURT: Not in this case.

Prior consistent statement.

MR. SCOTTI: Not consistent. Not consistent.

All I wanted to do is bring out the statements that were untrue. I didn't want to bring out prior

Mullins

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consistent statements. There had been no attack yet.

THE COURT: I will write out the pattern, these statements were excluded from evidence.

MR. ROSEN: Your Honor, I never offered them in evidence. The word "excluded" may give the impression you didn't like them or something.

MR. SCOTTI: Now Mr. Rosen is trying to work this as a double--

MR. ROSEN: I am not trying to work it --

MR. SCOTTI: The Government is a party in this prosecution also.

MR. ROSEN: I am trying to get your Honor to write to the jury that if they wish to hear any cross-examination regarding --

THE COURT: Were not admitted in evidence. You may -- if you wish to hear the testimony of the witness Marchione -- do you want to look at this?

MR. ROSEN: Yes.

I except it without looking at it.

THE CLERK: Jury note marked Court exhibit 13.

MR. ROSEN: That's fine, your Honor. Regarding those statements, I would just -- I think it's clear.

THE COURT: I think it's clear. Give it to the marshal, please.

Mullins

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2 MR. SCOTTI: I have the document that Mr. Rosen
3 was referring to marked as Government -- it should be
4 for identification.

5 THE COURT: Yes.

6 MR. SCOTTI: 19.

7 THE COURT: May I see it, please?

8 MR. SCOTTI: If it's all right, I will put an
9 I.D. on here.

10 THE COURT: Yes.

11 MR. SCOTTI: I also hand up to the Court 11 in
12 evidence which is the payroll sheet of Mr. Walker with
13 the social security number. You can see the last
14 digit is not the same.

15 THE COURT: Which is the correct -- 075 22 3507
16 listed in the Post Office or 075 22 3505 listed when he
17 turned over \$100,000 in bills.

18 MR. ROSEN: The correct one, as stipulated to by
19 the defense, was the one listed on the payroll records.

20 THE DEFENDANT: 075 22 3507.

21 MR. ROSEN: Let the record indicate that the
22 defendant just stated his social security number from
23 memory.

24 That's taken out of Brady because there could be
25 a possible --

Mullins

THE COURT: No, it doesn't take it out of Brady.

It should have been turned over.

MR. SCOTTI: I am sorry. I never considered it Brady. This doesn't show that in any way, number one. Number two, the transaction involves, as your Honor instructed the jury -- it was not an illegal transaction, but merely shows -- merely brought out to the jury to show the expenditures of cash.

THE COURT: How come you didn't use it?

MR. SCOTTI: Pardon me?

THE COURT: Why didn't you use it.

MR. SCOTTI: Why didn't I use what?

THE COURT: This evidence?

MR. SCOTTI: Well, your Honor, some things I was hoping to save for cross-examination. I had what I thought to be a sufficient amount of evidence.

THE COURT: The next time you will know better.

MR. SCOTTI: Well, maybe if we had a different jury we wouldn't be here.

MR. ROSEN: I most respectfully - it looks like a 7. I most respectfully submit that this is -- the most clearest example of Brady against Maryland that I have seen in the 12 years I have been privileged to be in this courtroom. This is a statement from a man

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7 1 who the Government claims stole \$100,000 or \$800,000
2 and here is a statement he signed with his name to the
3 Internal Revenue Service that he's converting \$100,000
4 of his alleged hot money into a bank check. If that's
5 not Brady --

6
7 MR. SCOTTI: I don't understand how that tends to
8 extricate the defendant from the charge.

9 THE COURT: Excuse me.

10 Are you finished?

11 MR. ROSEN: I am almost finished, your Honor.

12 Q Did you also state under oath before the Grand
13 Jury, Mr. Mullins, that you were aware of property that Mr.
14 Walker had purchased in 1971 and 73 up in Granville and
15 Mayfield, New York?

16 A Yes.

17 Q You told the Grand Jury all that?

18 Did you also tell the Grand Jury that during
19 your financial or your investigation into his financial
20 affairs you discovered a purchase of stock from a company
21 called Advest?

22 A Yes.

23 MR. ROSEN: I represent to your Honor that I
24 would have brought out much more financial -- let me
25 withdrawthat. Because I made a decision not to put Mr.

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Walker on the stand, I would have utilized the guts of the inspector's investigation to back up --

THE COURT: You have the deeds. The deeds were put into evidence.

MR. ROSEN: I have much more.

THE COURT: Don't the deeds show the dates?

MR. ROSEN: Not the stock certificates. The deeds to. But there were stock transactions and other transactions. I do most respectfully state to your Honor that this material was substantially useful to the defense. I could have used it. I would have gone into it whether your Honor thinks I would have hurt myself. That's a judgment for the jury.

THE COURT: Certainly.

MR. ROSEN: But I say I would -- I represent in good faith I would have gone into a lot of these matters. And I think they are matters directly in point to the Government's case.

THE COURT: I accept your statement. And I reiterate my statement to the Government that the Government's tactics in this case involving this stuff, this kind of information until the last minute, was in the Court's opinion -- was not defenseable. However, based on my analysis of the testimony, I find

Mullins

beyond any reasonable doubt that this information could not have affected the verdict except make a verdict of guilty more probable.

MR. ROSEN: I most respectfully disagree.

Now, I renew my application on the basis of the violation of Brady against Maryland on that tax form which I say would have allowed me to show the jury and have the jury take that with them perhaps in deliberation, a matter which indicates clearly a lack of consciousness of guilt and could have -- perhaps have made a big difference here. If a man fills out a Government form -- and again that would bolster my argument that this was not some secret, clandestine transaction, but open and above board at a bank and signing an I.R.S. form.

THE COURT: Yes, it's a good argument.

MR. SCOTT: I don't see how it's the Brady.

I don't see how it exculpates this defendant.

THE COURT: I believe it does.

MR. SCOTT: I don't. I would respectfully disagree with your Honor in that regard, number one. Number two, even assuming for the sake of argument that it did somehow under some stretch of the imagination, come under Brady, this is something certainly which was

10 1 not exclusively known to the Government. Mr. Walker
2 certainly has prepared this trial with Mr. Rosen.
3

4 And I am sure Mr. Rosen is a very capable attorney and
5 he asked him about all these things. He certainly knew
6 about the extent --

7 THE COURT: Are you aware of the fact that he
8 had made an I.R.S. --

9 MR. ROSEN: I believe I asked the witness
10 Kershaw, if I'm not mistaken.

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Mullins

THE COURT: Did you ask your client? Did you know from your client?

MR. ROSEN: I knew from my -- not about that IRS.

THE COURT: You didn't know?

MR. ROSEN: I knew from my client that forms were executed. And I think I asked Mr. Kershaw -- it was something given to the Government. I asked Mr. Walker, did you have to sign anything down at the bank. I believe I was told that he did sign some papers. That was the basis of my question.

THE COURT: Did you know that an IRS form was--

MR. ROSEN: I can't say to your Honor that I did. I am now standing here and I think I had a basis for asking that question, and that some form was signed. I am not sure it was this IRS form. I have to be as candid as I can.

THE COURT: All right. Well, it's a good argument, I think. But on the whole, I think that the evidence was so detrimental that it really doesn't make any difference.

MR. ROSEN: You mean the evidence -- the totality of the Government's proof?

THE COURT: No. This piece of evidence was

Mullins

so detrimental to the defendant that I can't say that a violation of the Brady rule warrants a mistrial.

MR. ROSEN: Is your Honor saying that because the last digit may be a five or a seven?

THE COURT: Not maybe. Clearly a five.

MR. ROSEN: Is that why your Honor is holding it detrimental to Mr. Walker?

THE COURT: Yes, I believe so.

MR. ROSEN: I don't -- I don't understand. I most respectfully disagree with your Honor as to the benefit I could have gotten out of this document.

THE COURT: It's debatable. It's a more debatable point than the rest.

MR. ROSEN: Thank you.

THE COURT: And I reiterate that the Government's tactics are holding back material to the last minute and not revealing the full file --

MR. SCOTTI: Well, your Honor --

THE COURT: -- is not in the Court's opinion justified and leads to this kind of thing, the Court's time on hearings and retrials that are intolerable.

MR. SCOTTI: For the record, there's no

3 1 Mullins

2 question about the fact that I should have given
3 Mr. Rosen the Grand Jury testimony of Mr. Mullins.
4 There is no question about that. I was wrong.

5 I do take exception to your Honor's
6 characterization of it as a tactic. It was not done
7 intentionally. It was not done willfully. It was
8 not done with any intent to gain any kind of
9 advantage. It was completely inadvertent because
10 of the circumstances of what was going on at the
11 time.

12 THE COURT: I don't agree.

13 MR. SCOTTI: I am sorry.

14 THE COURT: The whole tactic of holding things
15 up to the last minute instead of opening it up and
16 showing it so the defendant can prepare the case,
17 so we don't have this nonsense -- if you have a
18 case against the defendant as you did here, there's
19 no reason for holding this.

20 MR. SCOTTI: Whether or not there is a
21 reason -- whether or not there is a reason, the law
22 specifically provides that I do not have to give
23 anything --

24 THE COURT: I know what the -

25 MR. SCOTTI: Until after the witness testifies.

Mullins

I don't understand how your Honor can characterize it as a tactic with some venal purpose.

THE COURT: Because I don't believe that a prosecutor should use the law to withhold information, even though technically he is entitled to do so.

MR. SCOTTI: Well, your Honor, that may be true. That might be a philosophical point or a point that Congress may want to change. But I don't see the proposition that if you abide by the law you should be -- or you can be held accountable to it.

THE COURT: You continue to abide by the law, Mr. Scotti, with your colleagues and we will continue to have mistrials, reversals and activities of waste of the Court's time such as this.

Now, they want to hear Marchione's testimony.

MR. SCOTTI: The whole --

THE COURT: That's what they say.

THE CLERK: Jury note marked Court Exhibit 14.

THE COURT: Call the othercase.

I think the oil people better go out to lunch. I am sorry. 2 o'clock. I have to have this matter straightened out. Make it 1:30. Maybe we can start then.

1 Mullins

2 Try to pick out, gentlemen, if you would,
3 the testimony dealing with his statement.

4 MR. ROSEN: I am sure that's what they really
5 want.

6 THE COURT: They may want the whole thing.

7 MR. ROSEN: All right, we will pick out the
8 statements.

9 (Recess taken.)

10 (Continued next page.)

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1 THE CLERK: U.S.A. versus Walker

2 THE COURT: Have you agreed?

3 MR. SCOTTI: I don't know.

4 THE COURT: How much longer will you be?

5 MR. SCOTTI: Mr. Rosen is in the attorneys'
6 lounge looking through it.

7 THE COURT: Let's try to come to an agreement
8 shortly so we can move ahead, shall we?

9 MR. SCOTTI: I don't understand really the
10 jury's note. It appears they want all of Marchione's
11 testimony.

12 THE COURT: I will ask them when they come in
13 had they want all of it or just the point relating to
14 his statements to the Government.

15 MR. SCOTTI: Very well.

16 THE COURT: I'll ask them.

17 MR. SCOTTI: Very well.

18 (Pause)

19 <MR. ROSEN: Might I take one more moment to make an
20 additional infinitesimally brief argument if your Honor
21 would admit Government's Exhibit 19 for identification as
22 a defendant's exhibit I? I would have been able to
23 point out, your Honor, that the instrument bears
24 Mr. Walker's correct address and with great specificity
25 been able to show and argue that the last digit which

1 apparently is error, the number five, does not compare
2 with the other fives, I would be able to demonstrate
3 that and there is the same slant on the top of this
4 ^{five}~~five~~ which resembles the other sevens.

5 I might have been able to argue the man might
6 not remember all the digits of the social security
7 number. I think it would be extremely helpful to me.

8 THE COURT: It's possible. I think that is a
9 good argument. I'm almost persuaded by it. I think
10 it's very sound; but let's read the testimony.

11 MR. ROSEN: We have agreed on the bulk of it.
12 Mr. Scotti and I disagree on some areas.

13 MR. SCOTTI: Maybe we should come to side bar
14 so we can show your Honor what we are talking about.

15 (Continued next page)

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3 1 should not now be discharged?

2 MR. ROSEN: None.

3 MR. SCOTTI: None, your Honor.

4 THE COURT: Thank you, ladies and gentlemen,
5 for all your help. Good night. You can discuss this
6 or not as you feel free with anyone.

7 THE FOREMAN: Good night. Thank you

8 (Whereupon, the jury retired from the courtroom.)

9 THE COURT: I have carefully reconsidered the
10 Brady argument and I find it without any substance at
11 all. I believe beyond any reasonable doubt that it
12 would not have any impact at all on this verdict.

13 That had that issue been opened, it would have served
14 only to reinforce the proof of the Government. The
15 issue was at best cumulative. The defendant was
16 given full opportunity beyond the requirements of any
17 rules of procedure or evidence to bring to the jury's
18 attention that these activities took place in the
19 open. And as to this very instance, that was
20 established fully with the assistance of the Court.

21 MR. ROSEN: I respectfully except.

22 THE COURT: Yes. However, I would be happy
23 to receive briefs on this and on the 3500 issue at
24 the time of sentencing.

25 Do you wish to make a motion to set aside the

2 E D M O N D M U L L I N S , called as a witness, having
3 been first duly sworn by the Foreman of the Grand Jury,
4 testified as follows:

5 BY MR. SCOTTI:

6 Q Please state your name for the record.

7 A Edmond H. Mullins.

8 Q How are you employed?

9 A Postal Inspector, United States Postal Service.

10 Q How long have you been a Postal Inspector?

11 A Five and a half years.

12 Q During the past several years, have you been assigned
13 to any particular location by the Postal Service?

14 A For the last two years I have been assigned to the
15 Airport mail facility at John F. Kennedy Airport.

16 Q Does that cover Building 179 of the Airport facility
17 at JFK Airport?

18 A Yes, it does.

19 Q Explain or describe the duties of a Postal Inspector
20 to the ladies and gentlemen of the Grand Jury.

21 A A Postal Inspector investigates violations of Postal
22 law as well as performing audit functions within the Post
23 Office.

24 Q I take it that violations of Postal law would in-
25 clude infractions committed by Postal employees during the

DEFENDANT'S EXHIBIT AA FOR IDENTIFICATION
GRAND JURY TESTIMONY OF EDMUND H. MULLINS

rec 11/14/77 1/7/77
uwl

107A

UNITED STATES GRAND JURY

EASTERN DISTRICT OF NEW YORK

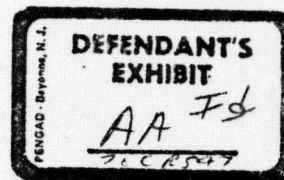
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UNITED STATES OF AMERICA :

-v- :

DAVID WALKER :

----- x



225 Cadman Plaza East
Brooklyn, New York

August 17, 1976
10:00 a.m.

APPEARANCES:

GAVIN SCOTTI, ESQ.,

Assistant United States Attorney

ELLIS TREMPER

Acting Grand Jury Reporter

NATIONAL REPORTING INC.
CERTIFIED SHORTHAND REPORTERS
FIVE WORLD TRADE CENTER
NEW YORK, N. Y. 10048
[212] 466-1280

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22 law as well as performing audit functions within the Post
23 Office.

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25 clude infractions committed by Postal employees during the

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performance of their duties?

A That's correct.

Q I direct your attention to the early part of September of 1975. In approximately the first week of 1975, during that time, did you have occasion to meet one Anthony Short?

A Yes, I did.

Q Tell the ladies and gentlemen of the Grand Jury how that came about.

A At the request of an attorney, Mr. Allan Salzman, S-a-l-z-m-a-n, Inspector Gerry Gaughran, G-a-u-g-h-r-a-n, and myself met Mr. Short in the law office of Mr. Salzman, located at 325 Broadway, Manhattan, on September 7, 1975. At that time Mr. Short related to me a conversation that he had had with David Walker in which David Walker had attempted to enlist, Mr. Short said, in taking a registry mail pouch from the Airport mail facility at JFK Airport.

Q Did you know at that time who Mr. Short was?

A At the time I walked into the lawyer's office, I did not know who he was.

Q Did Mr. Short in any way identify himself?

A Yes.

Q How did he identify himself?

A He gave me his name and told me where he was employed and what his duties were.

1
2 Q What was that?

3 A He was an assistant ramp clerk at JFK Airport, em-
4 ployed by the United States Postal Service.

5 Q Did he have any Postal Service identification on him?

6 A No, he did not.

7 Q Subsequent to this meeting, did you verify the fact
8 that Mr. Short was and is in fact a Postal Service employee?

9 A Yes, I did. An assistant ramp clerk at Kennedy.

10 Q Could you describe for the ladies and gentlemen of
11 the Grand Jury what an assistant ramp clerk does?

12 A He would bring mail that had missed a normal dispatch
13 out to meet various airlines for connecting flights. Also
14 driving around the ramp area and making sure the mail is
15 secure.

16 Q What is the ramp area?

17 A The ramp area is that portion of the airport that is
18 not runways, where the airplanes park and taxi into buildings
19 or terminals to unload passengers and pick up baggage.

20 Q To facilitate these duties would he have to drive a
21 vehicle?

22 A Yes, he would.

23 Q In other words, is it accurate to state that as a
24 normal course of Mr. Short's duties he would be in a vehicle
25 driving literally all over the airport?

2 A That is correct.

3 Q Would his duties take him to Building 179?

4 A Yes, they would.

5 Q You started telling us about the conversation which
6 Mr. Short related to you. Would you please continue with
7 that?

8 A Mr. Short told me he had been approached by a fore-
9 man at Building 179, David Walker, and that David Walker had
10 attempted to enlist his aid in stealing mail from Kennedy
11 Airport, that his job would be to take a pouch of mail from
12 Building 179 and meet David Walker at a predesignated spot
13 and give the bag to Mr. Walker. And for these actions he
14 would receive \$100,000.

15 Q Who was present on September 7th when Mr. Short was
16 telling you this?

17 A Inspector Gaughran, Allan Salzman, Anthony Short and
18 myself.

19 Q Did Mr. Short say anything with regard to the -- did
20 he tell you where the conversation took place with Mr. Walker?

21 (A He told me the conversation initially took place in
22 Building 179 at Kennedy Airport.) He then told me he had a
23 subsequent conversation with Mr. Walker over a telephone, and
24 he told me that he realized his story seemed rather incredu-
25 lous and that so that somebody believed him, he made a tape

1
2 recording of this telephone conversation.

3 Q Did he tell you when this telephone conversation
4 took place?

5 A He told me that the telephone conversation had taken
6 place the previous week.

7 Q Was the telephone conversation the same day that he
8 had the face-to-face conversation with Mr. Walker?

9 A I believe it was later on the same day.

10 Q Did Mr. Short have the taped conversation with him
11 on the 7th of September?

12 A Mr. Short had a copy of the taped conversation with
13 him, and he furnished it to me.

14 Q Did there come a time when you received the original
15 taped conversation from Mr. Short?

16 A Yes.

17 Q Did there come a time when you learned how Mr. Short
18 made this taped conversation, off what equipment?

19 A Yes, Mr. Short made the original recording over a
20 Phonemate which is a recording device attached to a telephone.

21 Q When you call up on the phone and someone says,
22 "Hello, this is X, I'm not here but leave a message at the
23 tone," something like that?

24 A That is correct.

25 Q Did you listen to the original and the copy --

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1
2 A Yes, I did.

3 Q -- of the tape?

4 A Yes.

5 Q Do you have a tape for us here today?

6 A I have a copy of the tape that Anthony Short had
7 given me on September 7th.

8 Q In other words, this is a copy of the copy?

9 A This is a copy of the copy that Mr. Short gave me.
10 I made the copy that I am going to play, in my office the
11 morning after I had received the copy of Mr. Short's tape.

12 Q This tape, then, is a conversation between Anthony
13 Short and David Walker?

14 A That is correct.

15 Q Now, before you play the tape, could you tell us if
16 Mr. Short -- or how it came to be that Mr. Short called
17 David Walker; did he explain to you why he called him and
18 made the tape?

19 A He didn't want -- he told Mr. Walker he didn't want
20 to discuss this type of thing in the Post Office, there
21 might be people listening or people that could overhear.

22 Q Would you please play the tape for the ladies and
23 gentlemen of the Grand Jury and identify for them the voices
24 of Mr. Short and Mr. Walker?

25 A The voices should be self-explanatory. They refer

1
2 to each other by name, Dave and Tony.

3 MR. SCOTTI: Before the Inspector plays the tape,
4 it's a small machine. If anybody can't hear the tape,
5 raise your hand, and we'll try to turn up the volume.

6 We'll put it in the middle of the room. I'll start
7 it out at the maximum volume. Sometimes I may have to
8 cut it back a little bit.

9 [Whereupon, a tape recording was played to the
10 Grand Jury.]

11 BY MR. SCOTTI:

12 Q Inspector Mullins, did you listen to the tape that
13 you have just played for the Grand Jury, on September 7, 1975?

14 A Yes, I did.

15 Q What, if any, action did you take or other Postal
16 Inspectors take with regard to the information and tape
17 which Mr. Short gave to you?

18 A We instituted a surveillance on the days that Anthony
19 Short and David Walker were working in the Post Office at
20 Kennedy Airport.

21 Q This surveillance was instituted at Building 179
22 at Kennedy Airport, that is your surveillance was instituted
23 only on days when Mr. Walker and Mr. Short were assigned on
24 duty, is that correct?

25 A Initially, that is correct.

Mullins 8-17-76

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Q How long did this surveillance continue?

3

4

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6

A The surveillance continued until December, '75, when the foreign dispatch unit moved out of Building 179 to an aircraft hangar that we get every Christmas because the mail volume increases.

7

8

David Walker was the foreman of the foreign dispatch, and he went with it.

9

10

Q He went with it?

A Yes.

11

12

Q Now, why would that necessarily have to curtail the surveillance?

13

14

A Because in the building where the foreign dispatch was handled, there is no facility for observation.

15

16

Q Now, did there come a time when you received information concerning the disappearance or loss of certain parcels?

17

18

A In January of 1976 I received a reclamation, which is a tracer form and claim for ten insured parcels.

19

20

21

Initially, I received the reclamation for five matured parcels, and about a week later I received reclamations for another five insured parcels.

22

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Q What was indicated on these reclamation forms?

A The Bank Nazionale Del Lavarò in Milan, Italy, had made ten insured parcels. The numbers were: 42, 44, 46, 48, 50, 542, 544, 546, 548 and 550, to the Irving Trust Company

1 on One Wall Street, New York, New York.

2 Q Did the forms state what was contained inside the
3 ten parcels that had been mailed?

4 A Each of the ten parcels contained \$80,000 in United
5 States currency.

6 Q Were these registered parcels?

7 *insured*
8 *parcels*
9 *now handled*
10 *same way* A These were insured parcels coming into the United States. The procedure at Kennedy Airport is that insured parcels from Italy are entered to the registry section.

11 Q Now, with respect to Parcels 42, 44 and 46, did the
12 bank in Milan give you a breakdown as to the kinds or type
13 of United States currency that was in each one of the par-
14 cels?

15 A Yes, they did. 42, 44 and 46 each contained \$80,000,
16 had an identical breakdown in United States currency. One
17 hundred \$100 bills, one thousand \$50 bills, and one thousand
18 \$20 bills, for a total of \$80,000.

19 Q In each one of the three parcels?

20 A Yes.

21 Q What about Parcel No. 48?

22 A 48 contained seven hundred \$100 bills, five hundred
23 \$10 bills, and one thousand \$5 bills.

24 Q What about Parcel No. 50?

25 A That contained eight hundred \$100 bills.

Q With respect to Parcel No. 542?

A 542 contained five hundred \$100 bills, eleven hundred \$20 bills, one thousand \$5 bills, and three thousand \$1 bills.

Parcel 544 contained five hundred \$100 bills, one thousand \$20 bills, and two thousand \$5 bills.

Parcel No. 546 and 548 contained the identical breakdown, and 544 I have not received a breakdown for. The bills in Parcel 550 --

Q Have you been advised that that parcel also contained \$80,000?

A I have the reclamation which showed it had \$80,000 in United States currency.

Q Now, did there come a time when you received further information concerning lost or missing parcels from the registry room?

A Yes, during my investigation I determined that the ten parcels I previously mentioned had been received at Kennedy Airport and dispatched 179/CPV, which is an insured parcel dispatch from Rome, Italy.

It arrived on El Italia Flight 610 of September 21, 1975. It was properly received for in the exterior room at Kennedy Airport. When the dispatch was opened, the articles were entered in the value cage, a secure cage within the

registry room, at 4:30 in the morning of September 22, 1975.

I obtained a bill from the vault clerk -- from the vault and determined that these parcels were in turn listed along with two other parcels in a mail bag that was destined for the Church Street Station.

The other two registered, 30633/1 and 30633/2, from Grenada. My investigation determined that these parcels were made by the Royal Bank of Grenada, St. George, Grenada, British West Indies, to Chase Manhattan Plaza, a Chase Manhattan Bank, New York, New York. These contained a total of \$5,291 in United States currency.

Postal 30633/1 contained \$4,000; and 30633/2 contained \$1,291.

Q With regard to your investigation, did you determine who the last Postal employee was in the chain of events to handle these 12 parcels?

A Yes, all parcels were signed out of the vault by Clerk Helen Helton who was a clerk who works in the GPO dispatching area, an area that these parcels would be placed in a mail bag and sent onward for dispatch.

Q In connection with this investigation, did you determine who else was on duty on the night or early morning of September 22, 1975?

A The foreman of the registry room on that day was

1
2 David Walker. I found all 12 parcels listed on a bill for
3 Church Street Station. The next step in procedure in the
4 registry room would have been for the bag itself, which is
5 identified by a rotary lock number, to be listed on another
6 bill going to GPO New York. We searched all of the records,
7 and there is no record of that rotary lock ever being listed
8 on the bill going anywhere from Kennedy Airport.

9 Q Was that bag ever received at GPO or Church Street?

10 A No, none of the parcels were received by the addres-
11 sees.

12 Q Have any of those parcels turned up to date in the
13 Post Office or in --

14 A None of the parcels have turned up.

15 Q Based on this information that you knew at this time
16 in January of 1976, what if any investigation did you then
17 conduct?

18 A I conducted an investigation of David Walker and
19 Helen Helton.

20 Q With regard to David Walker, what kind of an investi-
21 gation did you conduct?

22 A I conducted an investigation into his finances.

23 Q Was that to determine if he was spending large
24 amounts of money?

25 A It was.

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Q What was the result of that investigation in terms of expenditures of money by David Walker?

A It disclosed on or about October 14, 1975, a payment of \$1,440 was made on his Bankers Trust BankAmericard at the Union Hall Street branch of Bankers Trust Company, Jamaica, New York.

Q How was that payment made?

A The method of payment was in cash according to the Bankers Trust Company. My investigation further revealed on or about October 28, 1975, David Walker purchased a garden tractor from the South Hartford Equipment Company in South Hartford, New York, in the sum of \$2,250 in cash.

On or about December 30, 1975, a Ford Elite was purchased by David's wife, Modestine Walker. The purchase price consisted of a trade-in of another car and \$4,198 cash.

On or about the 6th of January, 1976, David Walker purchased several apartment buildings for the sum of \$500,000 from the Republic Company located at Six Grand Avenue, Great Neck, New York; and as the downpayment on this he paid \$100,020.49 in the form of a check that he received from a bank after turning in the identical amount in cash.

Q With regard to this purchase of buildings, did you yourself conduct the investigation there, or other Postal Inspectors?

1 A This was conducted by other Postal Inspectors.

2 Q Was that Inspector Caldwell and Inspector Gaughran?

3 A Yes.

4 Q Were the attorneys at the closing for this sale of
5 these apartment buildings, were they interviewed?

6 A They were.

7 Q What if any information was related to Inspectors
8 Caldwell and Gaughran which was then related to you?

9 A At the time of closing when it came time to produce
10 a certified check or cash to close the deal, David Walker
11 opened his briefcase and dumped a pile of cash on the table
12 which was described as the biggest amount of money that
13 anybody had ever seen.

14 Q Who described it as such?

15 A Both of the attorneys, I believe. At that point he
16 was told to take the cash out of there and get a certified
17 check for it.

18 He took the cash to a bank, and got a certified
19 check for it. The people at the bank who counted the money
20 were interviewed. They verified it was David Walker who
21 brought the cash in and received a certified check for it.

22 He then returned to the closing and consummated the
23 deal.

24 Q Now, was there any record that you discovered during
25

2 the course of your investigation which would indicate the
3 amount of cash which David Walker brought into the bank?

4 A Yes, there was an IRS form filled out by David Walker
5 indicating the amount of cash.

6 Q Which was?

7 A \$100,020.49.

8 Q Now, did your investigation continue?

9 A Yes, it did. My investigation continued and showed
10 that on January 29, 1976, David Walker went to E. Koppel,
11 Incorporated, Jamaica, New York, which is an automobile
12 dealership, and put \$500 cash as a deposit on a Jaguar XJ-6.

13 On the 5th of February, David Walker returned and
14 put down \$15,000 in \$50 bills on the same car. Two days
15 later on the 7th of February, he returned and put down \$428
16 in cash for the insurance for the vehicle.

17 Q Were the people at Koppel Motors interviewed?

18 A They were.

19 Q Did they state that the payment was made in cash?

20 A They did.

21 Q Did your investigation continue after that?

22 A It did.

23 Q Tell us what, if anything, was discovered.

24 A My investigation revealed that on February the 19th,
25 1976, Helen Helton purchased a Thunderbird from Superior Ford,

Mullins 8-17-76

17

1 Jackson Heights, New York. She traded in her car. David
2 Walker handed the salesman \$5,000 in cash, and Helen Helton
3 financed the rest of the purchase price over three years.
4

5 Q With regard to the purchase of the Thunderbird by
6 Helen Helton, I take it David Walker accompanied her to the
7 car dealership?

8 A That is correct.

9 Q Was this transaction observed by Postal Inspectors?

10 A Yes. The money was observed to come out of David
11 Walker's pocket.

12 Q Who were the Postal Inspectors who observed this?

13 A I don't recall at this time.

14 Q Do you have your notes with you?

15 A No, I don't.

16 Q Now, with regard to your investigation of David
17 Walker and Helen Helton, did you determine whether or not
18 David Walker owned any property?

19 A Yes, I did.

20 Q Where was that property located?

21 A He had property in two locations: Granville, New
22 York, and Mayfield, New York. This is in additions to the
23 lot he had owned in St. Albans that he had purchased.

24 Q Was this property purchased in 1971 and 1973 by
25 Mr. Walker?

1
2 A The property in Granville was purchased in 1971. I
3 believe that Mr. Walker and his wife purchased a portion of
4 that property from his partner in a larger land deal in
5 1973.

6 Q Now, did your investigation of Mr. Walker continue
7 with respect to any stock transactions which he may have
8 engaged in?

9 A Yes.

10 Q Tell us about that.

11 A. Mr. Walker had purchased stock from two stock broker-
12 ages, one was Advest. The name of the other one I don't
13 remember, but the individual that he purchased it from was
14 named Lomare. Mr. Lomare was an employee at Kennedy Airport.

15 Q Postal Service Employee?

16 A Yes, at Kennedy Airport.

17 Q Was Mr. Lomare interviewed?

18 A Mr. Lomare was interviewed by E. A. Caldwell.

19 Q By the way, do you recall how to spell Lomare?

20 A L-o-m-a-r-e, Vincent.

21 Q Did Mr. Lomare tell Inspector Caldwell how much
22 stock Mr. Walker purchased?

23 A He did.

24 Q What was that?

25 A He stated that he bought 200 shares of Pan Am stock

1
2 for a total of \$11,021.68. He wanted to know if Mr. Lomare
3 would take cash or a check. Mr. Lomare said he would take
4 the cash. And he gave him the \$11,025 in hundred-dollar
5 bills, some fifties, twenties and tens, mostly hundreds.

6 Q David Walker gave Mr. Lomare cash?

7 A That is correct.

8 MR. SCOTTI: I have no further questions of this
9 witness at this time. May the witness be excused?

10 Mr. Foreman, does anybody have any questions?

11 BY MR. SCOTTI:

12 Q During the course of your investigation, did you
13 determine the annual salary of David Walker?

14 A Yes, I did.

15 Q What was that?

16 A His annual salary at the time of his arrest was
17 approximately \$18,000 a year.

18 Q Do you know whether or not his wife is employed?

19 A His wife is employed. I believe she's a nurse for
20 the City of New York. I was not able to determine her
21 salary.

22 MR. SCOTTI: - I have no further questions. Does
23 anybody else have any questions?

24 [No response.]

25 THE FOREMAN: You are excused.

[Witness excused.] [Time noted: 11:00 a.m.]

I.R.S. FORM 4789 GOVERNMENT'S EXHIBIT 19 FOR IDENTIFICATION
File a separate report for each transaction
(Complete all applicable parts—see instructions)

126A

Part I Identity of person who conducted this transaction with the financial institution

Name (Last, first and middle initial) <u>DAVID WALKER</u>	Social security number <u>075 22-3505</u>
Number and street <u>188-25 121 Ave</u>	Business, occupation or profession
City or town, State and ZIP code <u>ST. ALBANS New YORK 11412</u>	

Part II Person or organization for whom this transaction was completed (Complete only if different than Part I)

Name	Identifying number
Number and street	Business, occupation or profession
City or town, State and ZIP code	

Part III Description of transaction (If additional space is needed, attach a separate schedule)

1. Nature of transaction (check the applicable boxes).

- | | |
|--|---|
| ☐ Deposit | ☒ Check purchased <u>Check # 979257</u> |
| ☐ Withdrawal | ☐ Traveler's checks purchased |
| ☐ Currency exchange | ☐ Security purchase (specify) |
| ☐ Check cashed | ☐ Other (specify) |

2. Total amount of currency transaction
(in U.S. dollars)
100.020.49

3. Amount in denominations of \$100 or
higher
100.00

4. Date of transaction (Month, day and
year)
1/6/76

5. If other than U.S. currency is involved, please furnish the following information:

Currency name	Country	Total amount of foreign currency
---------------	---------	----------------------------------

6. If a check was involved in this transaction, please furnish the following information (See instructions):

Date <u>1-6-76</u>	Payee <u>DAVID WALKER</u>
Drawer of check	Drawee bank and City or location <u>CHASE NATIONAL BANK</u>

Part IV Type of identification presented in this transaction

By customers:

- ☐ Savings account number.....
- ☐ Checking account number.....
- ☐ Share account number.....
- ☐ Loan account number.....
- ☐ Safety deposit box number.....
- ☐ Other (specify)

By others:

- | | | |
|--|---------|--------|
| ☐ Driver's permit | State | Number |
| ☐ Passport | Country | Number |
| ☐ Alien ID card | Country | Number |
| ☐ Other (specify) | | |

Part V Financial institution reporting the financial transaction

Name and address	Identifying number (see instructions)
	Business activity

Sign
here

Authorized signature

Title

Date

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----x

5 UNITED STATES OF AMERICA, :

6 -against- : 76-CR-547

7 DAVID WALKER, :

8 Defendant. :

9 -----x

10
11 United States Courthouse
12 Brooklyn, New York

13 March 11, 1977

14
15 B e f o r e :

16 HONORABLE JACOB WEINSTEIN, U.S.D.J.
17
18
19
20

21 DOLORES OLARNICK
22 ACTING OFFICIAL COURT REPORTER
23
24
25

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: CAVIN SCOTTI, ESQ.
Assistant U. S. Attorney

MICHAEL ROSEN, ESQ.
Saxe, Bacon & Balond, P.C.
Attorney for Defendant

1
2 COURT CLERK: Criminal Court for sentencing,
3 United States of America versus David Walker, Indict-
4 ment No. 76-CR-547.

5 MR. ROSEN: Good morning, Your Honor.

6 THE COURT: Mr. Rosen, have you had an
7 opportunity to read the presentence report?

8 MR. ROSEN: I have, Your Honor, and I take
9 exception to certain --

10 THE COURT: Excuse me. Have you had an
11 opportunity to discuss it with your client?

12 MR. ROSEN: Yes.

13 THE COURT: I will hear you.

14 MR. ROSEN: Your Honor, I take exception to
15 the inference raised in the presentence report that
16 the postal inspectors have some insight that Mr.
17 Walker may have been participating in other postal
18 thefts over the years or whatever they seem to be
19 inferring.

20 THE COURT: Let's find out.

21 Mr. Scotti, do you have any hard proof on
22 that?

23 MR. SCOTTI: No, Your Honor.

24 THE COURT: Then I will ignore that.

25 MR. ROSEN: I also take exception to the
type of characterization such as master-minded,

1
2 as that is just phraseology, I take exception to
3 the characterization and say the facts don't bear
4 it out; but for that, Judge, I do not have any others.

5 THE COURT: Ignore the characterization.

6 MR. ROSEN: Thank you, Your Honor.

7 Is Your Honor amenable to hearing a brief
8 comment on the motions which I made?

9 THE COURT: I have read all your papers.

10 MR. ROSEN: I haven't received any reply
11 from the government. Apparently, they wish to rest
12 on the record of Your Honor's prior determination.

13 I think most respectfully, the papers show
14 one thing and I am, again, Your Honor you may be
15 totally aware of 606 and all its ramifications, but
16 I am trying to persuade Your Honor that there is
17 not an instance where we are seeking through jurors
18 statements to impeach their verdict. Your Honor has
19 recognized in your treatise which was recently
20 delivered to the office, that it is permissible
21 under certain circumstances to show extrigent
22 pressures on the jury.

23 For example, a prejudicial newspaper article.
24 I am submitting to Your Honor that it is equally
25 permissible to show that their failure to be exposed

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2 to something which most respectfully, I submit,
3 they should have been exposed to permits, at least,
4 Your Honor to consider the statements.

5 Now, Your Honor may consider them and then
6 reject them; I am trying to get to first base.

7 Your Honor does have a right to consider the fact
8 that material which I submit is material under the

9 case and it should have been allowed
10 to be put in front of the jury and let them deter-
11 mine it.

12 I also want to say about this particular
13 form, I did not have any knowledge of the form
14 during the trial. Your Honor will remember during
15 Mr. Kirshowiz' examination, I had examined the
16 witness as to whether a lawyer had told Mr. Walker
17 that that transaction had to be reported. Your
18 Honor directed the witness not to answer the
19 question. I tried to briefly dissuade Your Honor
20 from that position and Your Honor said move on to
21 something else.

22 THE COURT: That didn't prevent you from
23 talking to the witness outside the Court. What I
24 allowed to go before the jury is not necessarily
25 what you were prevented from or were allowed to do

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2 outside the court in examining and preparing
3 witness. Those witnesses were not hostile to the
4 defendant and it was clear to the Court that they
5 would have consulted with you and told you what
6 you wanted to know. That whole incident was available
7 to the defendant as it was to the government. You
8 could have investigated it thoroughly.

9 As a matter of fact, your access to that
10 incident was far better than the government, because
11 you had your client and all of the people involved
12 would have been happy to talk to you. It is clear
13 from the context of that that your client had a full
14 file on it and so did everybody else who would have
15 been available to you.

16 MR. ROSEN: We are talking about an incident
17 where a person goes to a bank with a cash transac-
18 tion. The bank requires that person to sign a form.
19 To my knowledge, and I may be mistaken, one copy
20 is signed. Mr. Walker never had a copy --

21 THE COURT: Did you subpoena the bank?

22 MR. ROSEN: I don't know about the bank.

23 I knew --

24 THE COURT: You knew about it.

25 MR. ROSEN: They converted a bank check.

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2 THE COURT: You knew about it, at least
3 at the time of the trial, your client knew about
4 it. Your client is a highly intelligent person.
5 I saw him consulting with you constantly during
6 the trial. I am not going to accept those dis-
7 claimers of knowledge as though you were dealing
8 with an infant.

9 MR. ROSEN: Well, Judge, if the issue is
10 whether that material was known to the defense,
11 the answer is no. Your Honor is saying that it
12 should have been known.

13 THE COURT: I don't credit that.

14 MR. ROSEN: Well, I am making that represen-
15 tation that I did not know about it.

16 THE COURT: It was fully known to the
17 defendant.

18 MR. ROSEN: I submit, Your Honor, there
19 was no copy of this form.

20 THE COURT: The material was all open, the
21 incident was all open. I don't see any neglect on
22 the part of the government. I am not criticizing you
23 as counsel, I think you did a very fine job.

24 You have a very client and I believe he
25 turned over to you what he wanted to turn over to you.

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2 MR. ROSEN: Beyond that, I just wish to
3 call to the Court's attention, the Court's own
4 comments during the trial prior to the verdict of
5 the jury. I think clearly we have a situation of
6 Brady material, a situation where in fairness to
7 the defendant, it would have made a difference,
8 it could have certainly reasonably made a difference
9 in this trial.

10 I am also talking about Inspector Mullins'
11 testimony. My papers are there and I would like to
12 incorporate them as part of the record and urge
13 Your Honor to do two things to set aside the verdict
14 on the ground that the defendant has been deprived
15 of a fair trial under violation of the due process
16 clause and, secondly for a new trial under Rule 483,
17 on the grounds of newly discovered evidence that
18 incorporates and includes Inspector Mullins' testi-
19 mony under Rule 3500 to produce this type of infor-
20 mation by the government.

21 THE COURT: The defendant complains that
22 Brady material was not furnished. Apparently, in
23 connection with a purchase of real state, the
24 defendant filled out an Internal Revenue Service
25 form which was supposed to indicate his Social

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2 Security Number. The existence of this form alleged-
3 ly became known to the defendant's counsel for the
4 first time only after the Grand Jury testimony of
5 United States Postal Inspector Edmund H. Mullins
6 was turned over to the defendant. The jury had
7 already begun its deliberations by that time.
8 Counsel for the defendant argues that this form was
9 exculpatory evidence because it tended to show that
10 Mr. Walker conducted a large cash transaction in
11 a totally open and public manner, even going so
12 far as to report it to the IRS.

13 It is doubtful that this was Brady material.
14 The Social Security number given was not actually
15 the defendant's, because one of the digits was in-
16 correct. A computer has no imagination, and it
17 would not have turned up the defendant's name if
18 the Social Security number, as written, was fed
19 into it.

20 In any event, this evidence was merely
21 cumulative. The summation, beginning at Page 555
22 of the record, indicates that the defendant's
23 argument to the jury, as well as the evidence itself,
24 made it clear that use of large amounts of cash for
25 the purchase of the apartment buildings, with which

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2 this form was connected, was completely open; the
3 cash was turned over to the bank in return for a
4 certified check. This incident was fully known to
5 defense counsel, defense counsel had available the
6 defendant's records, defense counsel had available
7 the various witnesses to the incident and all the
8 records of the attorneys and others who participated
9 in the incident.

10 This form was filled out by the defendant.
11 There is no showing that he did not have a copy in
12 his files or that he was not, at least, fully aware
13 of its existence, or that he could not have obtained
14 a copy by the ordinary processes of subpoena and
15 investigation. The defendant had available to him
16 subsequent evidence showing a full investigative
17 team which interviewed the jurors and there is no
18 reason why he couldn't have used that team for this
19 kind of elementary pretrial discovery of materials.

20 The probability is that no mention of the
21 IRS Form was made by the defendant during the trial
22 because it was believed that this was inculpatory
23 rather than exculpatory. I don't say that the
24 defense counsel necessarily knew it, I accept his
25 statement that he did not know, but I believe that

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2 that the defendant himself knew it and deliberately,
3 therefore, kept it away.

4 It is also claimed that the failure to turn
5 over Inspector Mullins' Grand Jury testimony violated
6 both Brady and 18 USC Section 3500. There is nothing
7 in Mullins' testimony before the Grand Jury judged
8 either from a transcript of that testimony or a
9 reconstructed cross examination beginning at Page 641
10 to indicate any exculpatory information. All of the
11 technical information described by the Inspector
12 was available to the defendant who himself was an
13 extremely experienced supervisory employee of the
14 Post Office with many years dealing with this subject
15 matter.

16 Frequent conversations and consultations
17 between defense counsel and the defendant when
18 technical problems arose that were observed by the
19 Court, indicated that both defendant and defense
20 counsel were fully aware of all the technical
21 investigations presented to the Grand Jury by
22 Inspector Mullins. If defense counsel was not aware
23 of any specific information, it was because the
24 defendant himself didn't make it available.

25 The defendant sitting at defense table was

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2 clearly the best expert in the courtroom at all
3 times with respect to those matters.

4 Neither is there a violation of Section 3500.
5 In the first place, under Subdivision (b) the defen-
6 dant must move for 3500 material. In this connection,
7 the section provides, Subdivision (b), "**** after a
8 witness called by the United States has testified on
9 direct examination, the Court shall, on motion of
10 the defendant, order the United States to produce
11 any statement." No such motion was made.

12 In the second place, under the same pro-
13 vision, the materials must relate, "to the subject
14 matter as to which the witness has testified", on
15 direct. In this case, by direction of the Court,
16 the direct testimony of the witness was extremely
17 narrow. None of the material which the defendant
18 said should have been turned over to him pertained
19 to what Inspector Mullins said on direct examination.
20 Rule 3500 in this connection must be read with
21 Federal Rules of Evidence, Rule 611(b). Congress
22 deliberately reversed the rule proposed by the
23 Supreme Court saying that, "cross-examination should
24 be limited to the subject matters of the direct
25 examination and matters affecting the credibility

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2 "of a witness." To the extent, therefore, that
3 provision is read with 3500, it is fairly clear as
4 far as Congress intended it by making the witness
5 his own on cross-examination the defendant forewent
6 the benefits of Section 3500.

7 I am not suggesting that this is a desirable
8 rule, I believe, it is an undesirable rule, but that
9 is the rule that we have, that is 3500 as I just
10 interpreted it.

11 Finally, the reconstructed cross-examination
12 shows that the new material was cumulative and would
13 not have assisted the defendant in any way.

14 The Court is convinced beyond a reasonable
15 doubt that if all the material which the defendant
16 claimed should have been turned over during the
17 course of the trial, actually had been given to him,
18 the verdict would not have been affected in any way.

19 To dispute this, the defendant apparently
20 interviewed the jurors after the trial. He has
21 supplied to the Court mimeographed statements by
22 several of them indicating that they would, or might,
23 have been affected in their deliberations had they
24 known about this additional material. As indicated
25 at the trial, and post trial sessions of the Court,

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2 the Court is unconvinced that evidence of this kind
3 is at all useful. Jurors do attempt to be agreeable,
4 particularly when they are subjected to interrogation
5 by someone working on behalf of the defendant, who
6 they have found guilty, and without anyone presenting
7 the other side of the argument. In any event, the
8 material supplied is not to be considered by the
9 Court under Rule 606(b) of the Federal Rules of
10 Evidence. I should make it clear that if I had
11 considered it, I would give it no weight at all.

12 The amount of deliberation by the jury was
13 not excessive in view of the evidence, the strong
14 arguments of defense counsel and the good physical
15 appearance of the defendant which would ordinarily
16 incline a jury towards him. There is simply in
17 this Court's opinion based upon its observations
18 of the jury, the defendant, counsel and its witnesses
19 no basis in this case for a new trial.

20 In this imperfect world, the defendant
21 received as fair a trial as it is reasonable to
22 expect. What I have said should not be taken to
23 indicate that I condone the practices of the United
24 States Attorney, in this case, Mr. Scotti. I do not
25 condone it. I believe, that at least his practice

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2 was sloppy. I believe that Mr. Trager should take
3 disciplinary action against any Assistant United
4 States Attorney who engages in the practice engaged
5 here which is not to turn over 3500 material in
6 advance. We have had one reversal in a case tried
7 by me; there have been a number of other cases, I
8 think one, where I granted a mistrial and a new
9 trial and we have had other cases where there are
10 unnecessary appeals. This practice of holding back
11 3500 material or materials that might become 3500
12 for the last moment, so that hurly burly there are
13 mistakes seems to me to be indefensible even though
14 it is apparently permitted under the 2nd Circuit
15 interpretation of the Statute. However, the
16 defense counsel must in this case share the blame,
17 because the reason for requiring the motion is to
18 make certain that it is brought home to counsel
19 that these materials are required.

20 I would say, however, in defense of defense
21 counsel, that defense counsel tried the case in an
22 exemplary manner and in view of the fact that other
23 materials are turned over without such a motion as
24 a matter of custom and practice in the court, he
25 was probably justified in not making a specific

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2 motion as to each witness.

3 MR. SCOTTI: Your Honor, for the record,
4 I would point out to Your Honor in my letter dated
5 November 8, 1976, letter sent by me to Mr. Kulcsr,
6 the specific names of all the people who were handling
7 the department in this case were given to him. Mr.
8 Rosen subpoenaed Mrs. Horowitz and then decided not
9 to call her. Mr. Kulcsr was given an oral as well
10 as subsequent written explanation of how these
11 parcels came in and how they were handled, and the
12 people who handled them.

13 Mr. Rosen was given in my letter dated
14 November 24, 1976, the names of the two truck drivers
15 and addresses about whom Mr. Marchioni testified
16 moved the truck. Mr. Rosen was also given a complete
17 list of the names of all the employees in the
18 registry section at the time of the alleged crime,
19 including the addresses and telephone numbers of
20 these employees.

21 Certainly, with all of that information that
22 had been provided to defense counsel in advance of
23 the trial, it seems to me that although from my own
24 personal point of view, I must say to Your Honor,
25 as I candidly stated in the beginning, I should have,

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2 although I agree with Your Honor's ruling, but I
3 think to avoid any problems, I should have turned
4 this over, I did not. I am not going into the
5 reasons why I did not because we have been through
6 that already; but I would like to state for the
7 record that I think the record should reflect that
8 all of this information which was the subject matter
9 of Mr. Mullins' testimony about the time the parcels
10 came in and who was going to do what, and who the
11 employees were, was already made available to the
12 defendant and he certainly had more than enough
13 opportunity to explore that.

14 THE COURT: Have those letters been made
15 part of the record?

16 MR. SCOTTI: Copies of our discovery letters
17 were sent to the Clerk of the Court and they should
18 be in the file.

19 MR. ROSEN: I have no objection to acknow-
20 ledging receipt of them.

21 THE COURT: I make a finding that the failure
22 to turn over certain material was not an intentional
23 failure, it was a negligent failure.

24 MR. ROSEN: Your Honor, may I be heard on
25 sentence?

1 THE COURT: You may.

2 MR. ROSEN: Judge, I have gone over the
3 presentence report and I think Your Honor has heard
4 this case and I must state to Your Honor, that my
5 client has authorized me to tell this to Your Honor
6 that consistently he has maintained his innocence
7 as the catalyst of this scheme.
8

9 Judge, the presentence report shows basically
10 that he was, he is, a decent man. He has led a very
11 exemplary life. He came from a family of nine chil-
12 dren and did bootstrap himself up to a meaningful
13 life.

14 Your Honor, I heard what you did to Mr.
15 Marchioni, the previous defendant, and I am aware
16 that postal violations usually entail some incar-
17 ceration as a deterrent factor. I can accept that.
18 I would say to Your Honor, however, that in looking
19 at Mr. Walker's history, his involvement with fine
20 and charitable community projects, we are dealing
21 with a man I don't think has shown a venal streak
22 in his entire life. This incident stands alone,
23 but, I understand Your Honor is just dealing with
24 this incident. But the rest of his life should,
25 at least, commend itself to Your Honor to be as

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2 lenient, practical, compassionate as possible under
3 all the circumstances. I think Your Honor knows
4 this case as well as anybody and I will put Mr.
5 Walker in your hands.

6 THE COURT: Do you want to add anything?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: The maximum sentence here is
9 10 years, but in view of the defendant's general
10 exemplary behavior, I sentence him to three years
11 on each of the counts, one and two, to run concurrent.
12 A \$2,000 fine on Count One and a \$10,000 fine on
13 Count Two for a total fine of \$12,000. Terms of
14 his incarceration are concurrent. The fines are
15 consecutive.

16 I assume the government will take appropriate
17 action in view of the assets involved; a stay will
18 be granted pending the appeal.

19 You have a right to appeal. If you cannot
20 afford an attorney, an attorney will be appointed for
21 you and paid for by the government and other course
22 will be paid for. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 MR. ROSEN: May I advise Your Honor, that
25 the oral direction during the trial are that all

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2 assets be frozen, except for those necessary to life
3 has been complied with. I take it, Your Honor, that
4 -- well, let me just say this: If there is an appeal,
5 there will be some --

6 THE COURT: I am going to remove that stay.
7 I will hold it.

8 MR. ROSEN: I'm sorry, Your Honor?

9 THE COURT: I will remove any stay and he
10 can do whatever he wants. I will keep it for another
11 five days, then he can do whatever he wants with his
12 assets. It is up to the government to move swiftly
13 if they want to control his assets. They have
14 adequate tax lien laws and other available procedures.
15 I will not tie this man up. There is no stay of the
16 \$12,000 fine, he must pay the \$12,000 fine. There
17 is a stay of incarceration pending the appeal.

18 MR. ROSEN: That is what I want to understand.
19 The fine is not stayed pending the appeal?

20 THE COURT: No, it must be paid within 30
21 days.

22 MR. ROSEN: One of the things I want to bring
23 to Your Honor's attention is that if the government
24 does take those steps and ties him all up, could
25 Your Honor at least direct the government to permit

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2 the defendant to meet whatever legal printing costs
3 of this appeal?

4 THE COURT: Of course. You will have to
5 work that out. If he doesn't have any assets, he
6 will come in and the government will pay for the
7 appeal.
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I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it would have made a difference in my deliberations and verdict.

Witness

William Michlaro
6007 Fulton Rd.
Box 10471741

Agnes G. Davis
AGNES G. DAVIS
147-11-130 Ave
So. Ozone Pk. N.Y. 11436
Juror I 1/22/77

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

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Senta Sedlicki

SENTA SEDLICKI

93-54 QUEENS BLVD

R.G.O. PARK, QUEENS 11374

1/22/77 N.Y.

JUROR # 2

Witness

William M. Wilson
6007 Field St. Apt. 1
Bronx NY 10471

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it would have made a difference in my deliberations and verdict.

Witness

William M. Helan

6007 Faldston Rd.

Bx 24 10471

Mrs. Audrean T. Marbury

AUDREAN T. MARBURY

114-09 128 STREET

JUROR # 3

JANUARY 22, 1977

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it would have made a difference in my deliberations and verdict.

Claudia V. Groves

CLAUDIA V. GROVES

901 ST. MARKS AVE

BROOKLYN, NY 11213

1/22/77

Witness

William Nicholas

6007 Feldston Rd.

Bronx 10471 NY

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it ^{might} ~~would~~ have made a difference in my deliberations and verdict.

Witness

William Wheeler
6007 Keldston
Bronx NY 10471

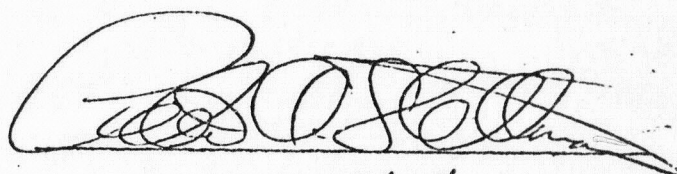
Sharon Dickman

Sharon Dickman
27-49 170 St.
Flushing, NY 11358
January 24, 1977
Juror #5

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it ~~would~~ ^{could} have made a difference in my deliberations and verdict.

Witness
William Whelan
6007 Feldston Rd.
BX 10471



PETER A. SKELLMANN
146 OAKSIDE DR.
SMITHTOWN N.Y.
ALC

Jan 24/77

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it ^{MIGHT} ~~would~~ have made a difference in my deliberations and verdict.

Witness
William J. Helan
6007 Keldston Rd.
Bronx NY 10471

Concetta Sinopoli
CONCETTA SINOPOLI
1723 HORATIO AVE
MERRICK, NY. 11566

JUROR #7

1/24/77

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it would have made a difference in my deliberations and verdict.

Witness

William Whelan
6007 Keldston
Bx NY 10471

Louis Lepler

LOUIS LEPLER
360 CAMEO DR.
MASSAPEQUA, N.Y.

January 14, 1977

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it ^{might} ~~would~~ have made a difference in my deliberations and verdict.

Witness
William McChelan
6007 Fieldston Rd.
Bx 10471 NY

THEKLA L. CHRISTOPHER
THEKLA L. CHRISTOPHER
25-07 45 STREET
LONG ISLAND CITY, NY 11103

Juror # 9

1/24/77

I was a trial juror in the case of U.S.A. vs. David Walker. After the jury had been discharged my fellow jurors and I spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen advised us that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors and I that Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it would have made a difference in my deliberations and verdict.

Witness

William M. Helan

*6007 Keldston Rd.
Bx NY 10471*

Joseph J. Athanasio

JOSEPH J. ATHANASIO

1 EAST CHERRY ST.

FLORAL PARK, N.Y. 11001

1/22/77 # 10

After the jury had been discharged my fellow jurors ~~and~~ spoke with Mr. Rosen who represented Mr. Walker at the trial. Mr. Rosen ^{then} advised ~~us~~ that while we were deliberating the government turned over to him a document which shows that Mr. Walker reported the \$100,000 bank transaction to the Internal Revenue Service. Mr. Rosen told my fellow jurors ~~and~~ that Mr. Walker's correct name and address appeared on the Internal Revenue Service form as did his Social Security number except for a questionable last digit.

Had I known about such document and heard that Mr. Walker reported this transaction to the government it ^{might} ~~would~~ have made a difference in my deliberations and verdict.

Witness

William Whelan
6007 Falestun Rd.
Box 10471 NY

Louis Thymius

Louis Thymius
30 Radcliff Ave.
Port Washington, NY 11050
January 26, 1977
Juror # 11

Charge

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2 THE COURT: I am going to add a sentence saying
3 each co-conspirator does not have to know the names of
T 1 am 4 the other co-conspirators. No objection to that, is
R 1 there?
SS/bw 5

6 MR. ROSEN: No.

7 MR. SCOTTI: I apologize for giving you that so
8 late. I did not think of it until this morning.

9 THE COURT: Bring in the jury.

10 (Jury enters courtroom)

11 THE COURT: Good morning everybody. Thank you
12 for coming in on time. I am sorry that we had other
13 problems that came up.

14 I am going to tell you what the law is now. I
15 want you to follow my instructions.

16 You have the sole duty to decide the facts. I
17 have no view at all of the guilt or innocence of this
18 defendant. I want to make that clear. Anything I may
19 have said or done that indicated I had any such view is
20 incorrect because I really do not. This is entirely your
21 province, not mine and it is not an easy problem for a
22 jury at any time.

23 The fact that the prosecution was brought in the
24 name of the United States does not mean a thing. Every-
25 body is equal in this court. Nobody is entitled to

Charge

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any sympathy or favor.

The indictment is just an accusation, not evidence of the crime. It is just a way of bringing the case into court.

This defendant has pled "not guilty." That means the Government has the burden of proving guilt beyond a reasonable doubt with respect to each element of each of the two crimes he is accused of committing. This burden never shifts. A defendant does not have to prove anything at all. He does not have to submit any evidence. He does not have to take the witness stand. You may draw no inference adverse to him because he did not testify; is that clear? You have to ignore that. That is the way the law is and properly so.

A presumption of innocence remains with the defendant throughout the trial and must have been considered by you in your deliberations. A reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life. Reasonable doubt can result either from the evidence or from lack of evidence.

Finding an individual to be guilty of a serious crime is, of course, an important matter and you will consider the importance of this matter in determining

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whether or not you do have a reasonable doubt.

Nevertheless, if, at the end of your deliberations you are convinced beyond a reasonable doubt that this defendant is guilty, then you should find him guilty and not be swayed by any considerations of sympathy or any other matters such as possible sentence.

There are two counts, charges, in the indictment.

The first count reads as follows:

"On or about September 22, 1975 at the registry section, building 179 of the airport mail facility, John F. Kennedy International Airport, within the Eastern District of New York, the defendant David Walker while employed as a information man of mails, United States Postal Service, the defendant Helen A. Helton, while employed as a clerk, United States Postal Service and the defendant Rosario R. Marchione, while employed as a transfer clerk, United States Postal Service, did knowingly and willfully embezzle 12 parcels of mail which came into their possession intended to be conveyed by mail, 10 addressed to the Irving Trust Company, New York, New York, and two addressed to the Chase Manhattan Bank, New York, New York, which parcels contained hundreds of thousands of dollars in United States currency."

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2 The exact amount of money is not critical nor is
3 the exact number of parcels. This count charges
4 Mr. Walker with a violation of Section 1709 of
5 Title 18 of the United States Code. I will read the
6 provisions to you.

7 "Whoever being a postal service officer or
8 employee embezzles any package, bag or mail or any
9 article or thing contained therein entrusted to him or
10 which comes into his possession intended to be conveyed
11 by mail or carried or delivered by any carrier,
12 messenger, agent or other person employed in any
13 department of the postal service or forwarded through
14 or delivered from any postal office or station thereof
15 established by authority of the Postmaster General of
16 the postal service, shall be guilty of a crime." That
17 means, if you think of it, the Government has to prove
18 four things beyond a reasonable doubt.

19 First, you have to find that Mr. Walker was a
20 postal service officer or employee. As to this element,
21 there does not seem to be any doubt that he was an
22 information man in charge of this part of the facility,
23 so he was an employee.

24 Second, you must find that the parcels contained
25 large amounts of cash as alleged in the indictment and

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1 that they were a part of the mails and were in the
2 processes of being forwarded through or delivered by
3 the post office. In considering this you must find the
4 parcels were in fact committed to the mails and that
5 they were not lost, stolen or otherwise removed before
6 becoming part of the mails. There may or may not be any
7 doubt about that. There was considerable evidence with
8 respect to monies and you have to take all of that into
9 account in determining whether there was money in these
10 sacks or somebody had stolen it overseas or some other
11 place before it was put in the mail.
12

13 Third, you must find that the parcels of mail
14 came into Mr. Walker's possession or were entrusted to
15 him in his capacity as a postal employee. There does
16 not seem to be a question that he was in charge of the
17 registry section that night on September 22 and he,
18 therefore, could be deemed to be in lawful possession
19 of registered parcels being processed at that facility
20 as part of his overall supervision.

21 The final question, is, of course the critical
22 question. That is that while the parcels were entrusted
23 to Mr. Walker's care in that registry department, that
24 he embezzled and that is the question. Did this
25 defendant participate in the theft at JFK on

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2 September 22, 1975 in substantial amounts of mail as
3 described by the witnesses that you heard.

4 Embezzlement is a form of theft. It occurs
5 when a person legally comes into possession or care of
6 goods belonging to another and while it is entrusted
7 to them he appropriates the articles to his own use.

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SS:KG

Charge

To find the defendant guilty of embezzlement you must find that he appropriated the parcels of mail with an intent to deprive the real owner of their use.

In short, you must find the bag of mail described by the witness was purposely and knowingly, for his own benefit, taken by this defendant not acting on behalf of the real owners or because of some mistake or accident or misunderstanding.

It is not necessary to find that he took personal and direct part in the embezzlement of the mail or in all aspects of it because of another section of the law that I will now read to you.

Section 2 of Title 18, "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal. Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

That is the so-called aiding and abetting provision. In order to find somebody as an aider and abettor to be a principal, it is necessary that he, in this case, the defendant, willfully associate

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himself in some way with the criminal venture and that he willfully participated in it as something he wished to bring about.

If you want to find out whether somebody is an aider and abettor in this sense you can ask, did he willfully and knowingly associate himself with the criminal venture to embezzle mail from the United States Post Office.

Did he participate in it as something he wished to bring about? Did he seek by his actions to make it succeed? If he did, he is an aider and abettor. The extent of his participation is not important. He need not himself have organized the whole crime. He need not himself have touched the bag so long as he took part knowingly and willfully in an attempt to make this criminal venture succeed. If he did, he is punishable and guilty the same as anybody else who participates.

Count 2 charges a conspiracy to commit the crime in Count 1. That part of the indictment reads as follows:

"From on or about and between September 1, 1975 to May 31, 1976 both dates being approximate and inclusive within this District and elsewhere including

Charge

1 Kennedy, Queens, and Brooklyn, the defendants,
2 David Walker, Helen A. Helton, and Rosario R.
3 Marchione did knowingly, willfully, unlawfully,
4 conspire and agree to commit an offense against the
5 United States in violation of Title 18, United States
6 Code, Section 1709 by conspiring to embezzle, steal,
7 abstract and remove a registered mail bag containing
8 twelve parcels of mail from the Registry Section
9 of Building 179 of the Airport Mail Facility,
10 John F. Kennedy International Airport which had been
11 entrusted to them as Postal Service employees and
12 had come into their possession, intended to be con-
13 veyed by mail.
14

15 That charge is a violation of the Conspiracy
16 Section 371, Title 18 which reads as follows:

17 "If two or more persons conspire to commit
18 any offense against the United States and one or more
19 do an act to effect the object of the conspiracy,
20 each of them is guilty of the conspiracy."

21 Here, too, there are again, four elements
22 that you have to find.

23 First, that there were two or more persons
24 involved. You cannot commit a conspiracy with
25 yourself. There have to be at least two.

4 1 Charge

2 Second, that the people involved willfully
3 and knowingly conspired or agreed to do the criminal
4 act.

5 Third, that the agreement was to commit an act
6 which is unlawful.

7 Fourth, that an act, a physical act, was
8 actually done to carry out the conspiracy, whether or
9 not it succeeded.

10 A conspiracy is a combination of two or more
11 people to accomplish an unlawful purpose. While it
12 is an agreement to violate the law, it is not neces-
13 sary that the person charged entered into an express
14 or formal agreement the way you would when you buy
15 a house where everything is written out in great
16 detail.

17 It can be done orally or in writing. It
18 can be done at a variety of different times. It is
19 enough if they come to an agreement with signals and
20 through a combination of statements and acts, as long
21 as a mutual understanding that there will be an un-
22 lawful act accomplished.

23 That can be shown by the actions of the
24 parties from which you can conclude there was a plan
25 or a common design, or scheme, or agreement that can

Charge

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2 be inferred.

3 Obviously, you have to look at all the sur-
4 rounding circumstances because normally conspiracies
5 of this kind are entered into secretly, and, therefore
6 evidence of what the parties did and said at a
7 variety of times has to be considered by you.

8 Mere innocent association for social purposes
9 is not a conspiracy. If A and B are conspiring
10 and C is just going along for lunch, C is not guilty
11 of the conspiracy. Even if C is around physically
12 but doesn't enter into it or even if he sees it goes
13 on and doesn't stop it, he is not guilty of the
14 conspiracy. He has to agree orally or tacitly by
15 what he does that he wants to and is going to parti-
16 cipate in this unlawful enterprise.

17 It is not necessary that each person partici-
18 pate in all aspects of it. Each person can have a
19 little part of it to do. It doesn't make any dif-
20 ference how big or how small that part is. It doesn't
21 make any difference when the person enters the con-
22 spiracy.

23 A and B can have an agreement that they are
24 going to do something and they need C to come in,
25 and C comes in by agreement at the last moment. The

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1
2 conspiracy still exists and they are all members of
3 it, but everybody has to know that there is this
4 plan to do something unlawful and be a part of it.

5 Again, it has to be done willfully and knowing-
6 ly. It is not willfully and knowingly done if it is
7 done by mistake or neglect or any other innocent
8 reason. A person is pushing a handtruck, not knowing
9 that he is helping a conspiracy, then he is not
10 guilty, but if he knows that is what is happening
11 and it is a part of the whole plan and he picks it
12 up later and throws it over or distributes the money,
13 then he is part of the conspiracy.

14 It has to be done intentionally and voluntarily
15 and with a bad purpose to violate the laws, in this
16 case, to embezzle money from the mail.

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CHARGE OF THE COURT

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THE COURT: (Cont'd.) A third point is it has to be an unlawful act. Obviously embezzling from the mail is unlawful.

Finally, there has to be a physical act done. It is not enough to merely agree to do an unlawful act. Something physical has to be done to carry it out in order to determine that there was a violation.

If you believe the witnesses, there were a whole series of overt acts and they have charged five of them, none of which would be enough. I will read you the five overt acts charged.

On or about September 22, 1975, at the registry section of Building 179 of the airport mail facility at JFK, Helen Helton prepared a bag of registered mail containing twelve parcels.

Two, at the same date and place, David Walker and Rosario R. Marchione took the bag and placed it in a mail truck with empty mail sacks.

Three, the same place and date -- no, at the same date, approximately, David Walker gave approximately \$200,000 to Helen Helton.

Four, on the same date, David Walker gave approximately \$30,000 to Rosario Marchione.

Five, on or about May 17, 1976, the defendant,

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CHARGE OF THE COURT

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David Walker and Helen Helton drove from Queens, New York, to Granville, New York.

You can ignore the fifth because whether they did or not, if there was not an embezzlement by September 22nd, what happened in May of 1976 wouldn't have been a crime, is that clear? The question is really what happened on September 22nd. The rest of it is evidentiary.

You have to find that all of these elements were proved beyond a reasonable doubt. In coming to a decision obviously the credibility of the witnesses is the critical factor here because most of the evidence is through testimony.

There were some documents, a few pictures and other material, but the main point, of course, was the testimony. In weighing that testimony, you have to consider the relationship of the witness to either the defendant or the Government, the witnesser's candor, the intelligence of the witnesses you observed, whether the witnesses' statements were corroborated or contradicted by other credible evidence and so on.

If you believe a witness has sworn falsely to you, you can ignore that witness's testimony

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2 completely.

3 Remember, particularly with respect to events
4 that occurred some time ago, a witness may be
5 mistaken as to some factors and accurate as to
6 others. You will have to pick and choose to decide
7 what parts of the testimony were accurate, what parts
8 were mistaken.

9 The fact that a witness is convicted of a
10 crime may be considered by you as evidence of lack
11 of morality which may make it more likely he will
12 lie on the witness stand. Testimony of an accomplice
13 or informer or someone who admits to having lied
14 needs to be carefully scrutinized by you.

15 In the first place, those things show a defect
16 of character which may be reflected in lying on the
17 witness stand and in the second place the witness
18 may be courting favor with the Government in
19 attempting to reduce, to some degree, the punishment,
20 in testifying as he or she did.

21 Keep in mind the law does not prohibit the
22 use of informers or alleged accomplices nor does it
23 prohibit the pleas or other arrangements which the
24 witnesses describe and whether you approve of use
25 of such type of plea arrangement, it should not

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influence your decision. You may consider it only from the point of view of credibility.

You can consider, of course, whether all of these people knew each other and in their relationship with respect to the conspiracy matter. You need not find one conspirator even knew who the other conspirators were, but you can consider the whole social relationship and all of the factors that you heard in determining both credibility and guilt or innocence.

We had at least one federal official who testified and a number towards the end, you remember, whose testimony, in effect, was stipulated without having them even sworn. Don't consider them any more credible than anybody else just because they are Government witnesses. They have to be treated like any other witness.

I have no view as to the credibility of these witnesses. Like the general question of guilt or innocence, that is your problem, not mine.

If you have any question about what a particular witness said at any time, you can send in a note. Try to be as specific as possible. We will try to get it out of the machine. In some

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cases the material has been typed up. Try to be specific so we do not read a great deal of unnecessary material.

If you want any of the documents sent in, send out a note and we will send in whatever you want or a few pictures of the other things. If you want the tape replayed, you can send in a note. We will try to set up for you so you can rehear it.

If you want any help with respect to the charge, send in a note and I will try to explain whatever is troubling you or explain, give you some explanation that may help solve some of the problems you find.

I want you, as I am sure you will, because you seem like a very intelligent and mature jury, to lis-en carefully to each other respectfully. Do not hesitate to change your mind if you think somebody else is right and you are wrong, but remember that each of you is individually responsible for this verdict and the verdict has to be unanimous.

The whole thing is summed up with the oath you took right at the outset; that is without fear or favor to any person; you will well and truly try the issues presented to you in this court according

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1 to the evidence and according to the law of the
2 United States.

3
4 Is there any reason why these alternates
5 should not be excused at this point?

6 MR. ROSEN: I don't see any, Judge.

7 MR. SCOTTI: No, your Honor.

8 THE COURT: The three alternates are excused.

9 Thank you very much. Do not discuss this
10 case with anyone, each other or anyone else until
11 after the verdict is in.

12 (Three alternates leave courtroom.)

13 THE COURT: Will the attorneys come to side
14 bar, please?

15 (Side bar)

16 THE COURT: Any objections?

17 MR. ROSEN: Yes, your Honor. I most respect-
18 fully object to the statement that your Honor made
19 that there may or may not be any doubt that money was
20 in those parcels because we heard testimony --
21 testimony -- about amounts of money being spent.
22 That's about as close --

23 THE COURT: I didn't say spent. What do you
24 want me to say? I thought I was saying what we had
25 discussed. If _ didn't, I'll correct it.

1
2 MR. ROSEN: I thought you were inferring that
3 because there was money being spent there seems to
4 be no doubt that was in the parcels.

5 (Open court)

6 THE COURT: Let me clarify something that the
7 attorneys think I may not have stated clearly to you.

8 You have to find that there was valuables
9 in these parcels.

10 (Side bar)

11 MR. SCOTTI: The charge is stealing of the
12 mail. It just requires theft of the mail.

13 (Open court)

14 THE COURT: As the evidence before you indicated,
15 if there were not money in those parcels then there
16 was no case here, is that clear? That is what this
17 case is all about. You have to find that money was
18 in the passing of the mail through any of those 12
19 packages they testified to, were in this bag that
20 allegedly was embezzled.

21 (Side bar)

22 THE COURT: Is that satisfactory?

23 MR. ROSEN: Slightly.

24 THE COURT: That is the case. I'm not dealing
25 with toys. We're dealing with money.

1 MR. SCOTTI: That's not an element of the
2 offense.

3 THE COURT: That's the case. Do you have any
4 objections?

5 MR. SCOTTI: No.

6 THE COURT: Is that sufficient then?

7 MR. ROSEN: It is.

8 (Open court)

9 THE COURT: Swear the marshals, please.

10 (Marshals sworn)

11 THE COURT: I understand you filled out your
12 luncheon menus. If you need anything else, coffee
13 or anything else, just send in a note. We'll send
14 it in. If you want to send a message home that
15 you are going to be delayed or whatever it is, just
16 write it out. We'll be happy to give you whatever
17 you need.

18 Consider your verdict.

19 Thank you.

20 (Jury leaves courtroom)

21 THE COURT: Gentlemen, you'll have to move
22 your things. We have another case. Please use
23 one table because we have a lot of lawyers.

24 MR. SCOTTI: I'll put everything in an
25 envelope marked "Evidence".

(Time noted 10:30.)

(Jury deliberating.)

1 (out of hearing of the jury)

2 THE COURT: They want Walker's bank books and
3 deeds to the property. Counsel have agreed that that
4 includes Defendant's Exhibit K, M, L, Defendant's
5 P, K, S, R, S, and Q.

6 Give it to the marshal to deliver it to
7 the jurors.

8 Have you agreed on the testimony of Shortt?

9 MR. ROSEN: They want it all.

10 THE COURT: We will play the tape first and
11 so much of the testimony. They they want Marchione's
12 testimony relative to the swing room.

13 MR. ROSEN: We have agreed on that.

14 THE COURT: And the testimony of Helton respec-
15 ting the nod.

16 MR. ROSEN: We have agreed on it.

17 THE COURT: All right. Bring in the jury.
18 (The jury entered the courtroom at 1:20 P.M.)

19 THE COURT: All right. Play the tape first.
20 (At this time Exhibit 3, a tape was played for the
21 jury)

22 (continued on next page)
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(Recording concluded.)

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THE COURT: All right, commence the reading, please.

(Whereupon, the reporter read as directed.)

THE COURT: Anytime when you have heard enough of a particular witness, let us know and we will go on, so we don't waste your time.

(Whereupon, the reporter read as directed.)

THE COURT: Any other testimony you wish read?

THE FOREMAN: Yes.

THE COURT: You wish other testimony. All right. Do you have it marked?

MR. SCOTTI: That was all.

THE COURT: All right, what else.

JUROR NUMBER TWO: No, that's all.

MR. ROSEN: Thank you.

THE COURT: Now, you also wanted the four points. I am not sure you wanted -- you wanted the four elements of each one of the crimes.

MR. SCOTTI: Your Honor, before you read that, may we approach the sidebar?

THE COURT: Yes.

(The following took place at the sidebar.)

MR. SCOTTI: Your Honor, the problem there -- this morning, with your Honor's charge -- I understand

1 exactly what your Honor means. The problem I have is
2 that it wasn't in your original charge that you gave
3 us to inspect. And I stated in the -- the part about
4 if there is no money, there is no crime. And in my
5 summation I told the jury that it didn't make any
6 difference what was in the parcels. The crime is the
7 theft of the mail.

8 THE COURT: But this was the only thing that
9 was testified to.

10 MR. SCOTTI: But your Honor's charge indicated
11 to the jury that I was wrong and that it's a direct
12 conflict --

13 THE COURT: No.

14 MR. SCOTTI: Because this statute merely pro-
15 vides --

16 I agree with your Honor that the substance of
17 it is the money. I am not arguing about that. What
18 I am saying is there is a possibility there, remote
19 as it might be, that the jury could find that
20 David Walker did steal this mail, but the money he
21 spent came from some place else. Since the statute
22 is clear, and I would like your Honor to clarify that --

23 THE COURT: All right.

24 (End of sidebar.)

25 THE COURT: The first is the embezzlement count.

1 I will just summarize the four points.

2 The Government has to prove beyond a reasonable
3 doubt that the defendant was a postal service employee
4 at the time. There doesn't seem to be any doubt about
5 that.

6 Second, that the parcels allegedly stolen were
7 part of the mails that were in the process of being
8 forwarded through the post office.

9 Third, that Mr. Walker's possession directly
10 or through employees that he was supervising was of
11 the mail; that it was in the course of the handling of
12 the mails, the registry, that this happened.

13 And finally -- and this is the critical thing --
14 did Mr. Walker, the defendant, assist or cooperate in
15 the stealing of the bag in question. That's the first
16 charge.

17 The second charge is the conspiracy count. There
18 has to be two or more people. It doesn't have to be
19 three. Two or more. Any two people.

20 Second, that they wilfully and knowingly con-
21 spired and agreed.

22 Third, that they conspired to do an unlawful
23 act. Embezzlement is an unlawful act.

24 And four, that one of the members did something
25 to carry out the -- carry out the conspiracy. Those

1 are the four elements.

2 What it comes down to, as you understand, is
3 whether this defendant participated in the stealing
4 of the bag of mail as testified to.

5 Any further questions on this?

6 Anything counsel would like me to add?

7 MR. ROSEN: May I see your Honor at the sidebar,
8 please?

9 THE COURT: Yes.

10 (The following took place at the sidebar.)

11 MR. ROSEN: I am not so sure I totally under-
12 stood what your Honor just said was the bottom line.
13 I understood Mr. Walker's being charged with number
14 one, the theft of the mail, or in the alternative, as
15 an aider or abettor. If they find he had nothing to
16 do with the theft of this particular parcel, then they
17 can't find him on either theory.

18 (End of sidebar.)

19 THE COURT: If he had nothing to do with the
20 theft of the parcels, he is not guilty. If he did,
21 and you find beyond a reasonable doubt, you could find
22 him guilty.

23 (The following took place at the sidebar.)

24 MR. ROSEN: That's all.

25 MR. SCOTT: I take it, when you referred to the

1 theft of the bag of mail, when you said the theft of
2 the bag of mail, it was a clarification. That was
3 a clarification that I asked for.

4 (End of sidebar.)

5 THE COURT: All right, thank you.

6 Retire again, please.

7 (Whereupon, the jury retired from the court-
8 room.)

9 THE COURT: All right, you can go out to
10 lunch.

11 MR. ROSEN: What time do you want us back?
12 Half hour?

13 THE COURT: Not before three because I'm going
14 to start the other case at ten after two. I won't
15 break for at least another hour.

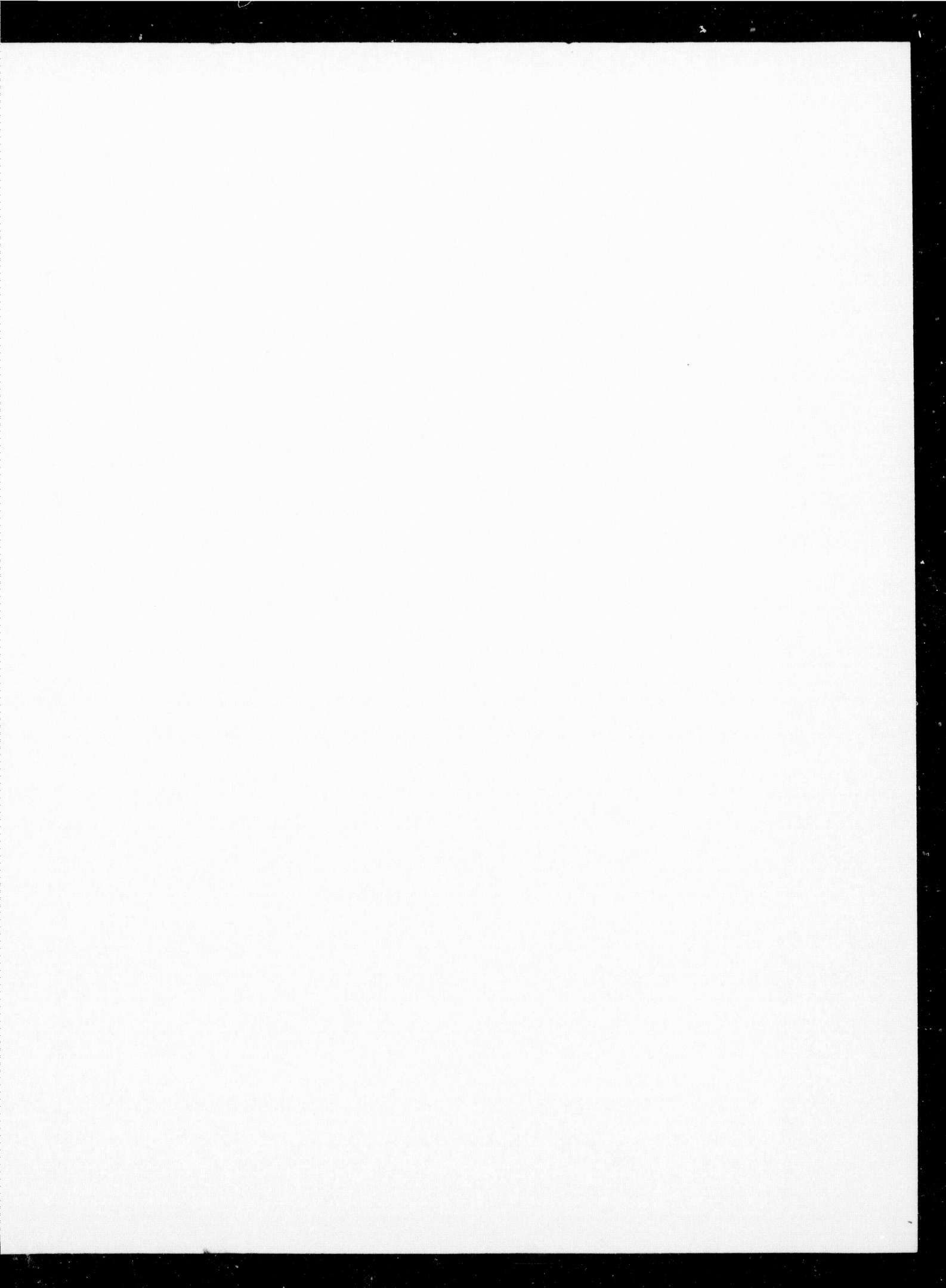
16 MR. ROSEN: Three o'clock?

17 THE COURT: Yes.

18 MR. ROSEN: Thank you, your Honor.

19 (Luncheon recess taken.)

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